Volume 1 - Main Report

Chemical Weapons Convention
Ratification, Implementation, Compliance and Verification
Contract Number AC93MC1002
Task Number 94-9

CWC INDUSTRY OUTREACH III

FINAL REPORT

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PREFACE

The 1995 Outreach III Seminars were the third in the series that began in 1993 with Outreach I and continued in 1994 with Outreach II. The work for Outreach III was accomplished under Task Order 94-9 (EAI) of ACDA Contract AC93MC1002. The final deliverable for this task order is this final report.

The final report is published in two volumes. Volume one describes the background and purpose of the seminars, the technical approach and methods used to establish the seminars, the concerns of the U.S. chemical industry that were expressed at the seminars, and recommendations for specific USG agencies and departments for actions to address the industry concerns. Volume two contains the scripts used by the speakers with the slides for those scripts, the biographical sketches of the speakers, important definitions of treaty-related terms, the list of schedule chemicals, sample draft declaration forms, and the official list of those who attended each seminar.

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LIST OF ABBREVIATIONS

ACDA	Arms Control and Disarmament Agency
BXA	Bureau of Export Administration (DOC)
CAS	Chemical Abstract Service
CBI	Confidential Business Information
CMA	Chemical Manufacturers Association
CW	Chemical Weapons
CWC	Chemical Weapons Convention
CWCIA	CWC Implementation Act
CWPF	Chemical Weapons Production Facility
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOJ	Department of Justice
EIF	Entry Into Force
EPA	Environmental Protection Agency
FBI	Federal Bureau of Investigation
FDA	Food and Drug Administration
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act of 1947
FOIA	Freedom of Information Act
GOCO	Government-owned Contractor-operated
IWG	Interagency Working Group
NA	National Authority
NTI	National Trial Inspection
NRRC	Nuclear Risk Reduction Center
OMB	Office of Management and Budget
ONA	Office of National Authority
OPCW	Organization for the Prohibition of Chemical Weapons
OSIA	On-Site Inspection Agency
PrepCom	Preparatory Commission
PSF	Phosphorus, Sulfur, Fluorine
PTS	Provisional Technical Secretariat
SARA	Superfund Title III, Superfund Amendments and Reauthorization Act of 1986
SNUR	Significant New Use Rule
TC	Treaty Compliance (Division of BXA)
TRI	Toxic Release Inventory
TS	Technical Secretariat
TSCA	Toxic Substances Control Act of 1976
UN	United Nations
USG	United States Government
USITC	United States International Trade Commission
WMD	Weapons of Mass Destruction

EXECUTIVE SUMMARY

E.1 BACKGROUND AND PURPOSE

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that will, upon entry into force, comprehensively ban chemical weapons. The Conference on Disarmament (CD) and its Ad Hoc Committee on Chemical Weapons completed negotiation of CWC in September 1992. The CWC was then approved by the United Nations General Assembly that November and signed in mid-January 1993 by over 130 countries. As of July 7, 1995, 159 countries have signed. The CWC will enter into force six months after the 65th ratification is deposited with the UN Secretary General. As of July 7, 1995, 30 countries have deposited their ratifications.

A significant feature of the CWC is that, for the first time, an international treaty contains obligations for commercial industrial facilities that produce, process, consume, import or export certain chemicals, comprising both reporting requirements and several kinds of inspections.

The essence of the problem addressed by this project is twofold:

- The majority of the U.S. chemical, pharmaceutical and related industries know little about the proposed CWC and its potential impact on their plant sites, and
- The final CWC and its implementation will be complex, will be technically challenging for inspections and industry, and will require extensive U.S. Government and industry coordination.

In response, this project presented a third annual series of six informational seminars to the chemical and related industries. The objective was to "reach a broader range of companies than during the first and second series of seminars [in 1993 and 1994] and bring companies up to date on CWC implementation and ratification efforts."

As the culmination of the project, this report provides results from that process and also significant insights and inputs from the attending companies. This information will be of use to U.S. PrepCom representatives, the U.S. officials writing implementation regulations, and the National Authority which will manage implementation in the United States. Specifically, the objective of the project, as stated in ACDA Contract Number AC93MC1002 (Task Statement Number 94-9(EAI)), is to: "provide updated CWC implementation information to those companies that attended a previous seminar"; "educate the large number of chemical and pharmaceutical manufacturers, small producers, users, formulators, importers, and exporters that have not yet responded to U.S. Government outreach efforts"; "provide specific instruction on industry declarations and reports required under the treaty regime"; and "solicit industry comments, ideas and concerns about U.S. implementation and compliance measures."

E.2 TECHNICAL APPROACH AND METHODS

The scope of the project required the following actions:

- contact the known "target industry";

- interface through seminars at selected sites;
- solicit, compile, analyze and report industry's points of view, reactions and concerns; and
- prepare recommendations for:
  - U.S. PrepCom negotiators
  - U.S. policymakers
  - CWC implementation actions required of specific agencies and departments of the USG

Companies which might be affected by the CWC have been identified during two ACDA-sponsored surveys of industry in 1993 and 1994 and were contacted by a direct mailing. The assistance of trade associations, published announcements, and a mailing by the Department of Commerce (DOC) to importers and exporters were relied upon to reach additional companies. In all, over 31,000 directly received information on the seminars.

A major early part of the project was the preparation of CWC seminar materials accompanied by slides and handout materials, in cooperation with ACDA and DOC, and the joint presentation of dry runs of the seminar. The latter materials included copies of the presentation slides and detailed chemical and definition lists. Attendees were also given a copy of the CWC.

Information from the Interim Reports on each of the six seminars, including the list of attendees and an edited transcript of industry comments on the impact of the CWC, is incorporated in this Final Report.

The objective of the analysis portion of this project is to determine those factors of CWC implementation that might affect the "target industry" and to develop recommendations for ACDA. The important results are captured in the recommendations.

E.3 CONCERNS OF THE U.S. CHEMICAL INDUSTRY

The comments and concerns of industry about the CWC are enlightening, but this report should not be considered comprehensive, since the number of attending companies was small (only 102 overall), few audience members had sufficient background on the treaty or on the different aspects of corporate affairs that will be affected to formulate their views on the spot, and some important details must still be provided by the PrepCom.

The consensus of the attendees could be summarized by the following formulation. Chemical industry companies stand ready to comply, but they ask that the U.S. Government:

- expedite further information on what they must do, where that includes getting the necessary guidelines from the PrepCom,
- take care to make new requirements no more difficult than necessary, and

- provide protections for industry's economic and legal interests under the treaty.

The strongest message from the seminars is that industry cooperation will be best assured by the most rapid and most complete provision of information on what they must do. They cannot begin many important preparatory steps until many more details are available. They are concerned with *what* information and guidance they will receive, *when*, and *how* government will communicate with industry. And they envision that a major informational campaign will be necessary to fully educate industry and generate the necessary universal compliance.

Industry needs additional information from the PrepCom, such as:

- reporting -- how to make quantitative determinations, additional exclusions from the discrete organic chemical category, and clarifications on many of the definitions,
- inspections -- facility agreements, the size of inspection teams and details of many of their procedures, and
- the handling of confidential business information (CBI) by the OPCW and the U.S.

Adequate and user friendly reporting forms and instructions, including an electronic format, are considered important. Concern about penalties was evident, but clearly industry would prefer to be sufficiently informed so that mistakes do not occur. Industry also desires that the implementing regulations coordinate with existing export controls on chemicals and technology.

E.4 RECOMMENDATIONS

The U.S. interagency working group and the National Authority must keep industry informed on U.S. and PrepCom activities, by providing further seminars and other opportunities for two-way communication, and by preparing to negotiate facility agreements at as many affected facilities as possible.

Outreach for future seminars and for final implementation must be more detailed, because of the expected extent of the expected regulations and the difficulty the chemical industry has had in quickly complying with other broad regulatory requirements.

In the U.S. implementation regulations, industry expects details on:

- the domestic timelines for reporting,
- availability of software providing an electronic reporting format,
- provision for a non-certified "Nothing to Report" response,
- how to handle the Initial Declaration if it must be filed before the end of the full calendar year prior to EIF,

- case studies of reporting on various changes in anticipated activities,
- groundrules for determining the primary responsibility for reporting in cases of toll manufacture and other secrecy agreements, leased facilities, joint ventures, facilities in non-States Parties, and exports by agents,
- provision of an inquiry hot-line,
- case studies of the possible application of the penalties,
- the bounds of information release by the National Authority for law enforcement,
- how to make claims for special CBI handling within the OPCW,
- reporting materials that 1) explicitly state the domestic protection for all submitted data and 2) state that the CBI claim on the forms pertains *only* to greater than the normal OPCW protections,
- a record-keeping requirement,
- coordination with existing export controls on chemicals,
- a mechanism to excuse reporting on discrete organic chemicals, after an initial declaration, if nothing changes on the form,
- advice on estimating the contribution of certain streams,
- additional guidance on public relations during inspections, handling samples on- and off-site, and advice to customers on possible reporting requirements,
- guidance for negotiation of a facility agreement,
- the role(s) of the National Authority escort and other government advisors,
- the company's rights with respect to prior vetting of individual inspectors, negotiation of the inspection plan, control of access, and review of the inspectors' reports, and
- a determination of how the challenge inspection regime affects government-owned, contractor-operated facilities.

The PrepCom should move quickly to provide clarifications on:

- many of the reporting provisions,
- inspection details, and
- the handling of CBI.

SECTION 1

BACKGROUND AND PURPOSE

1.1 BACKGROUND

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that will, upon entry into force, comprehensively ban chemical weapons. The Conference on Disarmament (CD) and its Ad Hoc Committee on Chemical Weapons completed negotiation of the CWC in September 1992. The CWC was then approved by the United Nations General Assembly that November and signed in mid-January 1993 by over 130 countries. As of July 7,* 1995, 159 countries have signed. The CWC will enter into force six months after the 65th ratification is deposited with the UN Secretary General. As of July 7, 1995, 30 countries have deposited their ratifications.

A significant feature of the CWC is that, for the first time in modern history, an international treaty contains obligations for commercial industrial facilities that produce, process, consume, import or export certain chemicals. However, some procedural and other unresolved issues have been passed on to the Preparatory Commission (PrepCom) for resolution. This project provides significant insights and inputs to U.S. PrepCom representatives.

The CWC requires that private U.S. companies make declarations on past, present and planned activities with certain chemicals defined by schedules and other definitions in the treaty. These companies will be required to report annually and will be subject to inspection by international teams from the Organization for the Prohibition of Chemical Weapons (OPCW), created to implement the CWC.

The necessary declarations and reporting will be accomplished in each country under the treaty-mandated National Authority. An important element in CWC implementation is industry's concern for confidential business information (CBI) and intrusion on operations. With respect to CBI, U.S. industry has potential concerns on how the Government and also the OPCW will handle and protect CBI.

A second aspect of the CWC impact on industry is the requirement for inspections. The final CWC specifies five different types of inspections applicable to industry, differentiated by specific language and thresholds:

- inspections of facilities producing or consuming chemicals that are in general prohibited (Schedule 1) for certain non-prohibited purposes,
- inspections of facilities producing or consuming Schedule 2 chemicals,
- inspections of facilities producing or consuming dual-use chemicals (Schedule 3),
- inspections of other relevant production facilities -- plants that produce discrete organic chemicals not on other schedules, and

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* Final date when the 65th ratification would have triggered entry into force (EIF) in 1995.

- challenge inspections of any chemical or pharmaceutical facility.

A related treaty requirement is that some plant sites will be required to participate in the negotiation of a facility agreement that will govern inspection of plants that declare scheduled chemicals. The specifics of these agreements in terms of format and content have not been determined.

Another dimension to the background for this report is industry's involvement to date. U.S. prompting in the mid-1980s led to a series of meetings that have been held at least annually between members of the international chemical industry and the diplomats of first the Ad Hoc Committee and now the PrepCom. These meetings promoted useful agreement among participants on topics such as the protection of CBI, the scope of materials to be covered by the arms control regime, and the procedures for conducting on-site inspections.

While the U.S. arms control community has built an effective relationship with the members of Chemical Manufacturers Association (CMA), interest in the CWC has been low among the chemical industry as a whole or with other important industry groups. Announcements for the first series of U.S. Arms Control & Disarmament Agency (ACDA) seminars on the CWC were mailed to 2500 management and production sites in early 1993, but only 110 companies attended the five briefings around the country.*

ACDA recognized that the range of chemicals and toxins in the CWC spans a wide variety of chemical production and processing plants beyond this group. But at the same time, the available data on quantities of chemicals is insufficient to comprehensively identify the target industry. Reporting thresholds for regulatory purposes, such as those of the Environmental Protection Agency (EPA), are generally far above those for the CWC schedules. For confidentiality purposes, industry usually reports in ranges rather than as precise numbers. Even when reporting in ranges, the U.S. Government affords individual company data confidentiality because of concerns over CBI.

In the fall of 1993, 10,000 letters containing extensive information on the CWC requirements were sent to a broad range of companies with chemical activities, with the request that companies with any likely CWC obligations send their names so that further information could be sent directly to them. Over half never responded, and even among the largest chemical producers, over 50 did not recognize their obligations.#

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* "Implications of the Chemical Weapons Convention on the U.S. chemical industry," prepared by Chemical and Biological Arms Control Institute (an affiliate of EAI Corporation) for the U.S. Arms Control and Disarmament Agency (Contract No. AC92MC1006), 18 June 1993.

"Survey of U.S. companies affected by the Chemical Weapons Convention," prepared by EAI Corporation for the U.S. Arms Control and Disarmament Agency (Contract No. AC93MC1002), 3 January 1994.

Announcements for the second series of ACDA seminars on the CWC were mailed to 4,000 companies in early 1994, based on the responses to the survey and a selection of the non-respondents judged most likely to be affected by the CWC, but only 153 companies attended the six briefings around the country.*

A second survey was conducted in 1994, using the database resources of the U.S. Government and updated public sources.#

Particular sectors of the affected industry which have not responded to these outreach efforts are:

- pharmaceutical manufacturers,
- smaller chemical producers and custom producers,
- formulators and other processors, and
- chemical distributors and shippers engaged in international trade.

The importance of the number of companies not involved must be recognized. While CMA members account for approximately 90 percent of U.S. chemical production, they only represent ten percent of the producing companies. To date, other producers, processors and consumers, which account for approximately 70 percent of the companies that perform CWC-affected functions, have not been involved in any dialogue on the CWC. It is essential that the leaders of these groups be brought into a fuller understanding of the CWC.

Thus the essence of the problem addressed by this project is that:

- the majority of the U.S. chemical, pharmaceutical and related industries knows little about the proposed CWC and its potential impact on their plant sites, and
- the final CWC and its implementation will be complex, will be technically challenging for inspections and industry, and will require extensive U.S. Government and industry coordination.

With the negotiations in Geneva ended and the center of action now in The Hague for final determination of guidelines and procedures, it is important that the U.S. Government (USG) continue to include industry concerns in the treaty finalization process. Such involvement is critical to their acceptance of the CWC and its requirements and burdens. This input might take a number of forms, including insights and recommendations for:

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* "CWC Industry Outreach II," prepared by EAI Corporation for the U.S. Arms Control and Disarmament Agency (Contract No. AC93MC1002), 8 July 1994. This report also contains a summary of industry comments from the 1993 Outreach I seminars.

"Survey II of U.S. companies affected by the CWC," prepared by EAI Corporation for the U.S. Arms Control and Disarmament Agency (Contract No. AC93MC1002), 7 December 1994.

- legislation and regulations necessary to implement the CWC at private facilities,
- procedures for reporting and inspections,
- handling of CBI in reporting and inspections,
- areas for further clarification at the PrepCom, and
- implementation actions keyed to specific government agencies and departments.

Within the context of this background, EAI Corporation laid out a technical approach to accomplish the objective desired by ACDA.

1.2 PURPOSE AND OBJECTIVE

The purpose of the project was to provide ACDA with technical assistance to "reach a broader range of companies than it did during the first and second series of seminars (including formulators/processors, custom producers and consumers of scheduled chemicals) and bring companies up to date on CWC implementation and ratification efforts."

The objectives of the project were to:

1. "provide updated CWC implementation information to those companies that attended a previous seminar";
2. "educate the large number of chemical and pharmaceutical manufacturers, small producer, users, formulators, importers, and exporters that have not yet responded to U.S. Government outreach efforts";
3. "provide specific instruction on industry declarations and reports required under the treaty regime"; and
4. "solicit industry comments, ideas and concerns about U.S. implementation and compliance measures."

1.3 PROJECT GOAL

The overall goal of the project was to contact all known members of the "target industry" and encourage maximum attendance at the seminars so as to provide industry with the most current information on their obligations and rights under the CWC.

SECTION 2

TECHNICAL APPROACH AND METHODS

This section, supplemented by details in Appendix A, describes EAI Corporation's methodological approach.

The technical approach to the project was based on EAI's interpretation of the project scope, objective and goal, as defined in the task statement provided by ACDA. This technical approach comprises the flow and interrelationship of project tasks, the overall organization of the project, and the general methodology that has been employed. The technical approach has been structured to meet each of the four identified components of the project, which are outlined at the outset of Section 2.1.

Discrete tasks and work elements involved in presenting the seminars are discussed in the rest of Section 2. Other tasks and elements which substantively support this report, such as compilation and categorization of industry comments, are discussed in Section 3. EAI recognizes that this Final Report must bring the four components listed below in the scope in subsection 2.1 into a cohesive product that ACDA can use in being responsive both to U.S. industry concerns and to perceived needs of the participants in the PrepCom negotiations to achieve a verifiable Treaty regime.

2.1 PROJECT SCOPE

The scope of the project included the following four components:

- contact the known "target industry,"
- interface through seminars at selected sites,
- solicit, compile, analyze and report industry's questions, concerns, responses, comments, ideas, reactions and concerns, and
- prepare recommendations for:
  - U.S. PrepCom negotiators
  - U.S. policymakers
  - CWC implementation actions required of specific agencies and departments of the USG

Within this scope, the following points merit mention.

- The target industry includes chemical and pharmaceutical companies and their respective plant sites with activities of production, processing, or consumption of chemicals listed in CWC Schedules 1 and 2, and producers of chemicals on Schedule 3 or defined as "other chemicals," as well as companies that import or export any scheduled chemicals.
- Interface with industry was viewed as pro-active. Contact with industry prior to the seminars was through announcements in journals and to associations, mailings to individual companies, notices in the *Federal Register* and

Commerce Business Daily, and a toll-free number for information and registration, as well as to support pre- and post-seminar coordination, inquiries and comments from industry.

- At each seminar site there was a mechanism for written comments from industry, a panel discussion of issues, and a record of all verbal comments made in the course of the seminar. For those companies that could not attend, the toll-free number was made available until the end of the project.
- A report on each seminar, including attendees and comments by industry, was prepared.
- Questions from those companies that could not attend were referred to the ACDA Office of Public Information.
- Industry's comments are herein categorized and analyzed to determine:
  - principal concerns of industry,
  - suggestions that might enhance CWC implementation actions by specific USG agencies and departments,
  - important shortfalls in CWC specifications and requirements, and
  - areas where further analysis and development of U.S. positions might respond to industry concerns, contribute to the PrepCom and CWC implementation, or otherwise enhance the CWC and/or U.S. implementation.

EAI developed its technical approach within this purpose, objective and scope.

2.2 SEMINAR SITE SELECTION AND TARGET INDUSTRY LISTING

The initial task in this project was to identify the target industry and prepare a list of candidates for regional seminar sites. The execution of this task was in two steps. First, identify seminar sites on a regional basis based on the distribution of the target industry. And second, invite companies within the target industry that have a requirement to respond to any CWC requirements.

The project team had performed a regional industry analysis, based on number and types of plant sites and company locations, during the 1993 Outreach I effort. That analysis, as extended during the 1994 Outreach II effort, was the starting point for regional site selection, as discussed in Appendix A.1.

An extensive listing of companies with a wide variety of chemical-related activities was developed in the two ACDA survey projects mentioned above in Section 1. The target industry list for the mailing to announce the present seminar series was derived from the earlier developed CWC target list generated under the Survey II task. That target list was defined by two primary data sets: survey responses and judgement additions. The target industry list for the Outreach III announcement represents a selection of the known and

highly likely companies as identified by the surveys.* The total selections conformed to the goal of around 1000 seminar announcement letters.

A conduit for information that was used to supplement other types of outreach during efforts in 1993 and 1994 was the trade and industry associations. Within the chemical industry and pharmaceutical industry there are numerous organizations which represent segments of the overall industry. For this third outreach effort, the 48 trade associations listed in Figure 2-1 were contacted. The presidents of these associations and other trade groups were sent a letter soliciting their support for announcing the seminars in trade association publications and mailings. The solicitation letter was also sent to 21 state trade associations (also listed in Figure 2-1).

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* There were four varieties of "positive" survey responses:

- M -- the company in question responded that they would "maybe" have reporting obligations under the CWC;
- M? -- the company returned a negative response to the survey or provided such a response when contacted by contractor personnel, and there existed enough information to modify their response to indicate that they would maybe have CWC reporting obligations;
- Y -- the company responded that they would have CWC reporting obligations; and
- Y? -- the company responded negatively or provided such a response when contacted by contractor personnel, but enough information existed to modify their response to indicate that the company would have CWC reporting obligations.

Other judgmental additions (indicated by a J or JR ["JR" indicates that the initial mailing was returned and then remailed to a new address, but no response was received]) were non-responding companies which were added to the list through research. All non-respondent companies bearing source codes of 01, 03, and 07 [see below for source identification] were included because of prior research which established that they all produce, process or use CWC-relevant chemicals. Non-respondent companies coded 08 (from the U.S. International Trade Commission - *Synthetic Organic Chemicals* (1992)) and 10 (U.S. Arms Control & Disarmament Agency export licensing list) were also added by contractor judgement due to the demonstrated high probability of their having obligations under the CWC. The U.S. Environmental Protection Agency's Section Seven Tracking System-1993 (source code 24) was searched for scheduled chemical producers; due to the likelihood of these flagged companies surpassing CWC thresholds, all were added to the target group. The U.S. Environmental Protection Agency's Toxic Release Inventory-1992 (source code 25) was searched for data on producers of hydrogen cyanide and phosgene. All identified companies were added to the target group due to the high probability of their exceeding treaty reporting thresholds. The U.S. Environmental Protection Agency's TSCA Update/CUS-1990 (source code 26) was subjected to a site-based query looking for facilities producing scheduled chemicals over treaty thresholds. All companies found in this search were added to the survey target list.

01 - SRI International - *Directory of Chemical Producers - United States* (1992)
03 - SRI International - U.S. ACDA Report AC91MC1005, "U.S. Producers and Consumers of CW-Related Chemicals" (1992)
07 - SRI International - *Directory of Chemical Producers - United States* (1993)

Adhesive and Sealant Council, Inc.	Washington, D.C.
Adhesives Manufacturers Association	Washington, D.C.
Alabama Chemical Association	Montgomery, AL
Alliance of Chemical Industries of New York State	Albany, NY
American Coke and Coal Chemicals Institute	Washington, DC
Association of the Suppliers of Printing and Publishing Technologies	Reston, VA
Associated Industries of KY	Louisville, KY
American Association of Exporters & Importers	New York, NY
American Electroplaters & Surface Finishers Society, Inc.	Orlando, FL
American Fiber Manufacturers Association	Washington, D.C.
American Petroleum Institute	Washington, D.C.
American Textile Manufacturers Institute, Inc.	Washington, D.C.
The American Wood Preservers Institute	Vienna, VA
Beer Institute	Washington, D.C.
Chemical Council of Missouri	Jefferson City, MO
Chemical Industry Committee, Tennessee Assoc. of Business	Nashville, TN
Chemical Industry Committee, West Virginia Manufacturers Association	Charlestown, WV
Chemical Industry Council of California	Sacramento, CA
Chemical Industry Council of Delaware	Wilmington, DE
Chemical Industry Council of Maryland	Linthicum Heights, MD
Chemical Industry Council of Illinois	Rosemont, IL
Chemical Industry Council of New Jersey	Trenton, NJ
Chemical Industry Council of North Carolina	Raleigh, NC
Chemical Manufacturers Association	Washington, D.C.
Chemical Producers and Distributors Association	Washington, D.C.
Chemical Specialties Manufacturers Assoc.	Washington, D.C.
Color Pigments Manufacturers Association Inc.	Alexandria, VA
Compressed Gas Association, Inc.	Arlington, VA
Distilled Spirits Council of the United States	Washington, D.C.
Drug, Chemical, & Allied Trades Association, Inc.	Syosset, NY
Electronic Industries Association	Washington, D.C.
Federation of Societies for Coating Technology	Blue Bell, PA
Flexible Packaging Association	Washington, D.C.
Florida Chemical Industry Council	Tallahassee, FL
Halogenated Solvents Industry Alliance	Washington, D.C.
The Chlorine Institute	Washington, D.C.
Hazardous Materials Advisory Council	Washington, D.C.
Independent Liquid Terminals Association	Washington, D.C.
Louisiana Chemical Association	Baton Rouge, LA
Michigan Chemical Council	Lansing, MI
National Agricultural Chemicals Association	Washington, D.C.
National Association of Chemical Distributors	Washington, D.C.
National Association of Chemical Recyclers	Washington, D.C.
National Association of Manufacturers	Washington, D.C.
National Association of Printing Ink Manufacturers, Inc.	Hasbrouck Heights, NJ
National Lime Association	Arlington, VA
National Paint and Coatings Assoc.	Washington, D.C.
National Petroleum Refiners Association	Washington, D.C.
National Pharmaceutical Council	Reston, VA

Figure 2-1. Associations and State Agencies Contacted

Massachusetts Chemical Technology Alliance	Boston, MA
Ohio Chemical Council	Columbus, OH
Pennsylvania Chemical Industry Council	Harrisburg, PA
Pharmaceutical Manufacturers Association	Washington, D.C.
Printing Industries of America	Arlington, VA
Pulp Chemicals Association	Norcross, GA
Roof Coatings Manufacturers Association	Rockville, MD
The Rubber Manufacturers Association	Washington, D.C.
Synthetic Organic Chemical Manufacturers Association	Washington, D.C.
Tennessee Association of Business	Nashville, TN
Texas Chemical Council	Austin, TX
The Chemical Industry Council of Associated Industries of Kentucky	Louisville, KY
The Chlorine Institute, Inc.	Washington, D.C.
The Cosmetic, Toiletry, & Fragrance Association, Inc.	Washington, D.C.
The Fertilizer Institute	Washington, D.C.
The Formaldehyde Institute, Inc.	Washington, D.C.
The Powder Coating Institute	Alexandria, VA
The Soap and Detergent Assoc.	New York, NY
The Society of the Plastics Industry, Inc.	Washington, D.C.
The Sulphur Institute	Washington, D.C.
West Virginia Manufacturers Association	Charleston, WV

Figure 2-1. Associations and State Agencies Contacted (Continued)

Outreach III also benefitted from the participation of the Department of Commerce (DOC), specifically, the Bureau of Export Administration (BXA). The seminars were advertised as a group in the *BXA Insider*, sent to a mailing list of 31,000, and individual, regional mailings were sent out for the two seminars that were scheduled to coincide with regional BXA briefings on export controls. The only mention in the non-governmental media was in *Chemical & Engineering News*, which mentioned the series and the April 20 Oakland seminar in particular.*

2.3 SEMINAR MATERIALS

A major early part of the project was the preparation of CWC seminar materials, culminating in the presentation of a dry run of the seminar for ACDA and Department of Commerce personnel. In this effort the EAI staff developed scripts for each of its assigned talks, accompanied by slides and handout materials, and it processed the talks and materials for the DOC and ACDA talks in a consistent format.

The scripts and support material were presented for review to ACDA and DOC personnel on March 17, 1995. Based on critique and comments, changes were made and presented at a second dry run on March 23. The scripts, slides and supplemental materials, as finally approved for presentation, comprise Annexes I, II and III, respectively, in Volume 2 of this report. Minor additional changes were made in the scripts between seminars to clarify certain points and to accommodate recent developments.

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* Lois Ember, "Commerce Department gears up to implement Chemical Weapons Treaty," *Chemical & Engineering News*, April 10, 1995, p. 28.

Materials prepared to support the presentations included slides and handout material distributed during participant registration. Handouts included the agenda, biographical sketches, additional materials for the presentations on reporting and declarations, a set of the presentation slides and a question form. Each attendee also received a copy of the treaty.

2.4 CONDUCT OF REGIONAL SEMINARS

Most of the details on conduct of the regional seminars are covered in Appendix A.3. The important aspects which support the analysis are described below.

Questions were taken from the audience during and after each presentation. Then informal panel discussions followed the scripted presentations at each seminar. The full panel, composed of representatives from ACDA, DOC, CMA and EAI (all of the presenters) began with written questions submitted during the earlier presentations and then opened the discussion for participants to ask further questions, make comments and raise concerns.

The rapporteur collected all of the oral and written questions during the presentations and the panel discussion during each seminar. After each seminar, an Interim Report was prepared that:

- listed attendees and other participants,
- presented an edited summary of industry's questions and comments on the impact of the CWC, and
- compiled (1) industry's reactions and concerns and the responses provided by presenters, (2) topics that need to be addressed in the PrepCom, and (3) actions required of the USG keyed to specific agencies and departments.

These three categories of information are also incorporated in this Final Report, in Annex IV (Volume 2), in Section 3, and in Appendix B, respectively.

The six Interim Reports have served two purposes:

- to capture the data from the seminar in a contemporary fashion, and
- to serve as the principal input to the analyses in this Final Report.

2.5 RECOMMENDATIONS

The objective of the analysis portion of this project is to determine those factors of CWC implementation that might affect the "target industry" and to develop recommendations for ACDA.

In Section 3, industry inputs are summarized, reviewed and evaluated. In addition to these summaries, a listing is presented in Appendix B of all identified industry concerns by the major subjects of industry concern. This appendix provides a feel for the broad range of approaches to the various concerns that are summarized in Section 3 and the variety of ways the concerns are expressed.

Then, recommendations, based on particular substantive concerns raised by industry, are presented in Section 4 in two major areas:

- items for consideration by U.S. PrepCom negotiators and policymakers; and
- suggestions for CWC implementation actions that are required of the US Government, keyed to specific agencies and departments.

While the results of this study are enlightening, this report, like its two predecessors, should not be considered comprehensive. The following limitations should be noted:

- This Outreach III effort once again gained response primarily from chemical producers and only in a limited fashion (including calls to the 800 number) from companies engaged in other treaty-relevant activities.
- Most responses at the seminars were requests for material to be repeated, made on the spur of the moment from people with no prior knowledge of the treaty. The overwhelming majority of the substantive questions and comments at most of the seminars came from a handful of participants, thus representing only a few corporate or personal concerns. Thus, most of the questions and concerns are not necessarily those that would have been asked upon greater reflection or with the benefit of readings in advance. Unfortunately, no post-seminar questions were submitted. This contributed to a further bias in the overall response presented herein.
- Various aspects of the treaty affect companies at different levels -- e.g., regulatory compliance, legal, public relations, bookkeeping, plant management. But these functions were covered for few if any firms and very unevenly for the audience as a whole.
- Some important details affecting industry have yet to be considered at the PrepCom, or have not yet been formally announced, so the audience could not make specific comments.

SECTION 3

CONCERNS OF THE U.S. CHEMICAL INDUSTRY

The targeted industry's comments and questions at the seminars, paraphrased summaries of which were published in the six seminar Interim Reports and are grouped by topic in Appendix B, have been further summarized and analyzed to produce the following presentation of industry concerns about the impact of the CWC, in Section 3, and the recommendations which may be extracted, in Section 4.

The consensus of the attendees could be summarized by the following formulation, which will form the structure of the bulk of Section 3. Chemical industry companies stand ready to comply, but they ask that the government:

- expedite further information on what they must do (subsection 3.1),
- expedite the necessary guidelines from the PrepCom (subsection 3.2),
- take care to make new requirements no more difficult than necessary (subsection 3.3), and
- provide protections for industry's economic and legal interests under the treaty (subsection 3.4).

Not all of the comments in Appendix B are represented in the following review and the wording has been edited. The locations of the original comments are referenced in parentheses for each sentence, paragraph or group of paragraphs.

3.1 EXPEDITE INFORMATION ON REQUIREMENTS

The strongest message from the seminars is that industrial cooperation will be best assured by the most rapid and most complete provision of information on what industry must do and when it must be done, along with the means to comply expeditiously.

Many companies are still confused by the admonition to "start preparing now" when so many critical reporting details remain undecided, which depends on the question of "when?" (B.1.1), although they seemed largely satisfied by descriptions of what materials they would eventually receive. Representatives from multinational companies noted that they should prepare for interruptions of their normal business between operations in States Parties and non-States Parties, and they requested information on those countries of concern that probably won't be signatories so that trade interruptions can be identified in advance. (B.3.1.1)

More questions concerned the timing of CWC implementation. For example, many attendees asked when the Senate was expected to provide its advice and consent; when the implementation bill was expected to be passed by both houses and when the President was expected to sign it. Another question concerned whether or not the government would have a draft review period for the implementing regulations. They were also interested in whether Japanese, French or other draft regulations were of use. The audience asked when the PrepCom expert group's recommendations would be implemented. They also inquired as to what the earliest reporting date in advance of EIF would be. (B.3.1.1)

Beyond *what* they will receive and *when*, companies were again concerned with *how* government intends to communicate with industry and vice versa. They were concerned with how industry should channel its inquiries; how companies will receive reporting documents; how the mailing list will be compiled and used; and how announcements will be labeled in the *Federal Register* and subsequently incorporated in the *Code of Federal Regulations*. (B.3.1.2)

Companies again see the need for a major outreach campaign beyond the *Federal Register* (B.3.1.2), expressing concern over the many companies which have not heard of the CWC. (B.3.1.3)

More than in prior years, there was a widely expressed need for readily available guidance at the time declarations are being prepared, to discuss all of the individual issues such as exemptions pertaining to discrete organic chemicals (B.3.1.2). Attendees were wary of a new telephone CWC declaration assistance service offered by the Department of Commerce and were concerned about possible sluggish response times for mail or facsimile requests which will be necessary for many chemical determinations (B.3.1.1).

Critical to expeditious compliance are adequate reporting forms and formats. It was particularly requested that reporting to the National Authority be possible via electronic media, even if not the first time around. Interest was also expressed in DOC's intention to post declaration information on the Internet. (B.3.1.2)

Companies clearly see the advantages of facility agreements, including the clarification of protections discussed in subsection 3.2.4 and the enforcement of safety standards. They will welcome model agreements and detailed guidance on when and how to negotiate the agreements. Queries included whether every detail had to be included initially, or whether alternately, the agreement could be amended at the time of an inspection. They also wanted to know whether a facility agreement would be applicable to challenge inspections of undeclared sites and whether the managed access provisions, as a minimum, would apply. (B.2.1)

3.2 ACQUIRE THE NECESSARY GUIDELINES FROM THE PREPCOM

Industry needs additional information that must be decided by the PrepCom, on both the specifics of the data reporting and the specifics of inspections. This information should be a key feature of future informational seminars.

Clarifications are needed on the definitions of the reportable activities, including on:

- how to make the quantitative determinations in a wide variety of engineering cases,
- the guidelines on low concentrations, intermediate products, and the treatment of mixtures,
- exclusions from the "other chemical" category, and
- thresholds for reporting on trade and on individual produced chemicals in aggregates.

Companies also sought more information on the details of inspections and the protection of CBI during them.

3.2.1 Definitions for Data Reporting (B.3.2.1)

Companies expressed a need for clarifications on many points, including the guidelines on minimum concentrations and treatment of mixtures. These other points include:

- whether any potentially, theoretically isolatable intermediate must be reported, or only those that can be isolated with the existing knowledge and equipment present in the plant or at the plant site;
- in a multi-step reaction, whether the amounts of successive transient and unisolated intermediates are to be aggregated for a report on plant production; what thresholds apply to reporting on trade and on individual produced chemicals in aggregates;
- whether reporting will be required for Schedule 3 chemicals that are components of mixtures;
- whether a process byproduct which is discharged into the air or water through a permit must be considered a produced chemical that needs to be reported; and
- for a reportable chemical in a mixture, whether reporting is based on the entire mixture or only on the reportable component.

Companies once again pointed out the difficulty and seeming illogic of reporting on byproducts that are directly destroyed and on the products in waste treatment operations.

Finally, questions were asked concerning whether these matters were subject to Preparatory Commission negotiating or whether they will be determined nationally.

3.2.2 Coverage of "Other Chemicals" (B.3.2.2)

Companies requested clarified and simply stated exclusions to the class of "other chemicals": polymers, "complex materials," hydrocarbon producing facilities (including exploration and production activities where physical separations occur like removing sulfur, the destructive distillation of bituminous coal, and the distillation of crude coke oven tar), and (fermentation) ethanol.

Other specific questions on "other chemicals" that will require official determinations in regulations or by an ombudsman were: whether the scope includes salts of nitrogen mustard and the non-intentional creations of discrete organic chemicals by biological processes in municipal water treatment facilities, where the latter are examples of the many difficult-to-identify byproduct materials in chemical reactions.

3.2.3 Other Reporting Issues

Several companies were concerned about various issues regarding the responsibility for reporting. Specifically, they were concerned about (1) determining who reports in the case of tolling arrangements (both production and processing, made difficult by secrecy and separate record-keeping) and how tollers will extrapolate the *potential* of scheduled chemical activity when the business typically operates on very short notice; (2) in the similar case of a waste stream containing known or possible unknown scheduled chemicals sent off-site for processing or incineration (even use as a fuel source for reportable chemical activities); and (3) on a multinational corporation subsidiary facility in a country that does not ratify the CWC. A related question is whether or not the U.S. National Authority is looking to the company's headquarters in the U.S. to take the lead in assuring that the foreign reports are submitted. (B.1.3)

Strong concerns were expressed over:

- the apparent need for detailed searching to identify reportable chemicals, in the absence of concentration and weight thresholds (noted in Section 3.2.1, above), such as investigating the possible scheduled chemical contents of various materials from suppliers that are not fully specified on Material Safety Data Sheets or quizzing R&D labs to determine whether somebody might have at some point acquired a scheduled chemical and how much of all chemicals are produced, and secondarily about documentation and record keeping to show that these inquiries were made; (B.1.3)

- the possibility that the schedules could grow (countered by observations of particular chemicals that were curiously absent) (B.3.2.3);

- the request for main activities, which is poorly defined (B.3.2.4); and

- anticipated reporting, which would be a particular burden (B.3.2.4).

One attendee suggested that discrete organic chemical producers that are producing the maximum amount could be exempted from annual reporting unless something changes. The question was whether any thought been given to not requiring an annual report if nothing changes (such as ownership or production falls into a lower category). (B.3.2.4)

Finally, one attendee strongly questioned the rationale for the short time frame after ratification for reporting, given the long negotiation and the complexity and novelty of the reporting requirements. (B.3.2.4)

3.2.4 Routine Inspections (B.3.2.5)

Perhaps the greatest concern this year was over the fate of routine inspection reports. The audience wanted to know when the facility or plant would be informed if there are problems noted or if an anomaly was noted in the report, how the reports will be reviewed, and what provisions there would be for the plant to resolve issues; whether the final report going to the Inspector General also go back to the site or only to the National Authority; and in the latter case, whether the inspected site could request a copy of the final inspection report or whether the facility would ever receive a copy of the final report.

There was also interest in both general rules and particular details for routine inspections, but virtually no interest in challenge inspections. The audience asked if there would be any control or balance in terms of in which country inspections are done. They wanted to know if the primary concern during inspections was the development of other chemical agents. They wanted to know what the likelihood and procedures would be for excluding potential inspectors from participating in inspections in this country, such as from suspect countries or from those countries that do not observe patent protections (B.4.2.1). They inquired as to whether inspections, such as the first sets of inspections at Schedule 1 facilities, would be limited to the declared schedule and to the declared plant site (not going elsewhere in the facility or to customers' facilities) and whether managed access procedures apply to *non*-challenge inspections. They asked whether there will be potential language or safety problems, such as general rules, contact lenses, and beards, and whether photography will be an issue. They asked whether the press would be informed of inspections and how interested they will be (B.2.2).

Finally, one attendee stated a dilemma for the inspected site, asking: "If I were inspecting for compliance, and I was told 'you can't go here and you can't go here, you can't see this and you can't take samples there,' I would be very suspicious. How do you convince them that these places really have nothing to do with CWC and you're not hiding anything?" Another attendee asked whether there would be training provided by the government, or would the legislation would shift the burden by requiring sites to train their employees about inspections.

3.2.5 Confidential Business Information (B.4.2)

Particular concern was again expressed about sampling, but more in the sense of a great burden in complex, specialty production facilities and as a cause of safety concerns if moved off site. There was also concern about the exposure of CBI in pilot plants and research facilities, and the question was raised as to whether onsite inspection reports, as opposed to declarations, would be available under the Freedom of Information Act.

Doubts were again expressed about the allowed information release for law enforcement purposes -- in particular *which* laws will be involved: the Clean Air Act, Clean Water Act, RCRA. (B.4.3.2)

Finally, in one seminar the attendees took great exception to the provision on the Certification Form for a CBI claim. Without a requirement that a claim be demonstrated, as with TSCA, attendees predicted that companies will make the claim "as a matter of course," which would both place a great burden on the National Authority and raise the costs of compliance on the taxpayers.

3.3 MINIMIZE THE DIFFICULTY OF COMPLIANCE (D.4.1.1, D.4.3)

In part, this realm of industry concern goes hand in hand with providing information to facilitate industrial preparations. Concern about penalties was evident (see Section 3.4), but clearly industry would prefer to be sufficiently informed so that mistakes do not occur. In the event of late regulatory information, many companies will not be able to comply or may never hear about their requirements at all (B.1.1). In that regard, a question was asked concerning what guidance documents will made be available and when industry will see them (B.3.2.4).

Regardless of whether CWC inspection information might be used for other law enforcement (Section 3.2), there was concern about the burden of independent but concurrent inspections from other agencies, such as EPA or OSHA, which could not only overwhelm facility personnel but could have serious public relations consequences.

The "No" response added to the Certification Form after prior seminar comments was misunderstood as being part of the certification itself and likely to intimidate submitters (see Section 3.4 for other certification comments).

Many companies hoped that the implementation legislation will include coordination with existing export controls. They asked whether all States Parties will become eligible for general export licenses, or whether there will be any conflict between the CWC and the Australia Group. They inquired as to whether both Australia Group and CWC rules will govern trade with non-States Parties. They asked whether the scheduled chemicals will be assigned individual ECCNs. They were interested in whether the normal trade license applications will be adapted to provide all of the necessary CWC reporting information.

Several specific questions arose. They asked about who will report on GOCO (government-owned, contractor-operated) facilities. They also inquired into who will pay for the cost of sampling, and were specifically interested in whether the government would pay.

One frequently voiced concern does show that attendees were thinking about compliance -- record-keeping. The wanted to know about what data will be inspectable and how long industry must maintain records. Any requirement should be made official in the regulation and particular help may be required for companies that have no records retention policy since they have never had a previous reporting requirement (e.g., guidelines as to internal controls, duplicate record-keeping). But from a different angle, they wanted to know if there will be record-keeping requirements to demonstrate that a company was *not* obligated, and if so, how long records will have to be kept to substantiate that negative evaluation.

There was some realization that industry cooperation can also make compliance easier. For instance, under the CMA Product Stewardship program, manufacturers of Schedule 2 chemicals might inform their customers who would be processors that they could be obliged to report. (B.1.3)

3.4 PROVIDE PROTECTIONS FOR ECONOMIC AND LEGAL CONTINGENCIES

In addition to questions with legal implications in the prior subsections (e.g., 3.2.4), several matters of particular concern were raised that require early advice or assistance.

They asked about what conditions might result in a plant being designated as a CWPF and what the possible consequences would be. They wanted information concerning whether there would be a chance of a plant receiving that designation for having a large amount of Schedule 1 chemicals, although it has never had anything to do with chemical weapons. (B.1.1)

Some companies have gone through many reorganizations, including shuffling among previous and present corporate owners. Facilities from the 1960s, not to mention the post-WWII years, may have gone through several owners or may no longer exist.

They inquired as to what the National Authority intends to do to relieve present companies of anxiety about prior connection with the U.S. CW production and research programs of purchased facilities or of facilities that have existed for several decades within the same company. Besides government records, they asked whether the NA will seek to use the human resources in companies who may remember anecdotal connections that are no longer documented in any company records. (B.1.1)

They asked about how company officials can be expected to certify that no one in the company is doing something declarable. Referring to the certification statement, some sites will be unable to certify for all subsidiary or entire corporate structure. Flexible certification language in the form is needed.

They asked whether corporations that receive the declaration packages and determine that they do not have to report still have to make a non-use declaration.

Although it was clearly explained during the seminars that foreign facilities report to their host States Parties, several subsidiary questions arose. In some cases an international organization controlling certain foreign subsidiaries in many countries may conduct all management activities and maintain records at headquarters in one or even none of those (other) States Parties. The audience asked about how those facilities can be expected to make declarations. They asked whether the U.S. NA intends to assist U.S. corporations in that situation by providing a list of other national authorities to use when off-shore facilities ask where to send forms. They inquired as to who has reporting responsibility in the case of joint ventures or for a minority interest in organizations and/or facilities. Commerce should also be prepared with clear advice on voluntary actions in the case of overseas plant sites in non-States Parties. (B.1.3)

Complicated ownership or control of domestic facilities will more broadly complicate the determination of domestic declaration responsibilities. Other than tolling that was mentioned above (Section 3.2.2), questions were asked about plant condos (where you own a plant and its equipment, but it is operated for you by another company) and the presence of two or more tenants on a single plant site (who might actually have to make a single aggregated declaration). (B.1.3)

Several questions were asked about what kind of possible enforcement action there will be for noncompliance. They inquired as to the expected level of aggressiveness in enforcement. They asked about whether there will be enforcement penalty guidance published after the legislation, such as the guidance documents issued by the EPA concerning how they intend to enforce the rules and what the policies will be. They asked about the consequences for those companies that are unaware of the reporting requirements. Further, they wanted information concerning the penalties for errors in filling out a form. (B.4.1.1)

Several specific questions arose concerning the possible consequences if a company's product is illegally reexported to a non-permitted use; and whether facility agreements require the inspectors to waive potential court liability against the facility. (B.4.1.1)

Finally, as "a philosophical point," they wanted to know if the any guidance they receive in response to their own telephone inquires is legally binding. (B.4.1.1)

SECTION 4

RECOMMENDATIONS FOR SPECIFIC USG AGENCIES AND DEPARTMENTS

Recommendations are based on the comments and questions reviewed in Section 3 and on insights from preparation of the seminar series.

4.1 ISSUES FOR THE PREPCOM NEGOTIATORS

The PrepCom should move quickly to provide clarifications (as highlighted in subsection 3.2) on:

- many of the reporting provisions,
- inspection details, and
- the handling of CBI.

The following are specific items of particular interest to industry. Certain cases raised by participants in the seminars probably need a combination of PrepCom decisions and National Authority explication (along with the other matters discussed in subsection 4.2.3):

- guidelines on making the quantitative determinations for reporting on a wide variety of engineering cases, including intermediates, successive steps in a plant or plant site, minimum concentrations, and mixtures,
- exclusions from the "other chemical" category, such as alcohol produced by fermentation, "complex materials" including their downstream products, the treated fabric after a textile mill applies a Schedule 2 chemical, and hydrocarbons in spite of the small amounts of sulfur or other impurities,
- threshold size for a change in anticipated activities that needs to be reported,
- guidelines for reporting on recycling, involving all reportable activities and chemicals,
- what aspects of handling Schedule 2 products for resale would be reported as "processing,"
- guidelines on reporting the production capacity of a Schedule 2 chemical, both as to actual work week or round-the-clock, and how to report on a capacity that is changing over time and is substantially different now from last year or next year,
- a determination that only the listed chemicals will be analyzed for during on-site inspections,
- a list of States Parties and of their national authorities, particularly for the use of international corporations whose foreign operations are managed from the U.S., and

- a PrepCom decision that the model facility agreement contain a provision requiring inspectors to waive potential court liability against the facility and also that such a waiver be listed as a standard procedure for the beginning of all other inspections.

In general, industry pleads for precise definitions, including explanation of the word "discrete" rather than leaving it to the interpretation of individual plant managers. And the PrepCom should be made aware that much of industry considers that reporting on byproducts that are directly destroyed and on the products in waste treatment operations and water treatment plants is difficult and illogical.

4.2 RECOMMENDATIONS FOR THE NATIONAL AUTHORITY

4.2.1 Industry Awareness

Several observations illuminate the current state of industry awareness:

- The project mailing of 1000 pieces, a DOC/BXA mailing of 30,000, and two official Federal Government announcements brought in 157 seminar attendees from 102 companies among the targeted industry and 23 other government and private organizations. The initial direct mailing was responsible for an overwhelming majority of the inquiries. Non-targeted companies responded mostly as a result of the official announcements.

- The lack of response from the associations that were contacted can be attributed to two major reasons: intra-organizational bureaucracy and a continued lack of interest or understanding.

- Few company representatives at the briefings were able to move beyond informational questions to constructive or incisive comments in the framework of the one-day seminars. The attendees were again relatively passive with only a small minority asking any substantive questions.

4.2.2 Activities for Next Phase of Outreach

ACDA should keep industry informed on U.S. and PrepCom activities, by providing further seminars and other opportunities for two-way communication, and by preparing to negotiate facility agreements with as many facilities as possible (as highlighted in subsections 4.2.1 and 4.2.3).

Industry liaison groups are urgently needed, both on the U.S. interagency and National Authority and the PrepCom levels.

Further seminars should occur following the treaty ratification and passage of the implementation law and shortly after publication of the draft regulations. Indeed, the seminar announcement could be packaged with a mass mailing of the regulations. The seminar could be of two types:

- A few sessions should be organized to provide extensive detail for scheduled chemical companies, whose representatives should come with prior knowledge, including that based on pre-seminar supplemental materials. EAI recommends that two sessions be held: one in Washington, D.C. and one in another city.

- Other sessions would present a first introduction to the CWC aimed particularly at "other chemical" producers and at smaller companies, with emphasis primarily on reporting and secondarily on Schedule 3-type inspections. EAI recommends that a session be held in each of these five cities: Washington, Chicago, Houston, Newark, and Atlanta.

The special seminars for small companies are needed because such companies were less likely to come to the earlier Outreach series, and their representatives were apparently less able to absorb the material and contribute to the discussion, compared to large companies that were able to send multiple representatives with different backgrounds.

Outreach for the further seminars and for final implementation must be even more intense, because of the probable detail of the expected regulations and because of historical difficulty that the chemical industry has had in complying with such a broad requirement as the CWC, in the face of an unprecedented, all-important initial declaration, whereas U.S. domestic regulations typically take several years to get up to speed.

The next series of ACDA seminars should necessarily include explication by the PrepCom of how sequential production steps and waste treatment processes and are to be treated with respect to thresholds, and the establishment of the low concentration guidelines. These definitions will also contribute to the concreteness of further outreach to chemical producers.

Three other groups are much more difficult to reach: 1) the non-producers who are processors and users of Schedule 2, 2) the producers of "other chemicals" and 3) the non-producer/processor/consumer import/exporters of Schedule 2 and all importers/exporters of Schedule 3.

Clarifications and guidelines are needed. The first group again needs explication of the activity definitions, accounting rules and thresholds. The second group needs an extensive discussion of the boundaries of "otherness," in particular, how natural materials are to be treated. The third group requires a determination of the United States threshold for compiling the National Aggregates on importing and exporting.

The first group could be reached in various ways:

- Some users are captured in the SNUR (Significant New Use Rule) reporting to USEPA under TSCA, but with the obstacles, as above, of the family names and confidentiality. The chemical names can, however, be searched by characteristic parts of the names* and the results screened by outreach

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* Such a search has been done on the whole CAS system for the Schedule 1 and 2 families, as part of an ERDEC project, but it might be slower to search the TSCA database by these names, if the input is not directly electronic, than to inspect the smaller number of likely hits in TSCA.

personnel; confidentiality would require special controls on a mailing or nonspecific but explicit and convincing language.*

- Non-producers can also be reached through the sales records of reporting producers and importers, but this misses secondary distributor sales and it runs into severe confidentiality problems. Perhaps letters should be distributed to the originators of the chemicals with a legislative requirement that a letter go to each recipient in turn and that recipients send them on as needed.

The second and third groups, as well as the first, could be reached through more wide-ranging means:

- Publication of notices in journals and through all possible professional journals, with clear definitions and examples in the notices. Although previous response was minimal, very pointed publicity is essential.
- Additional mailings to the nonrespondees on mailing lists compiled by:
  - CMA and other associations (their activities will be crucial),
  - FDA,
  - USITC, and
  - Office of Toxic Substances, USEPA (TSCA, TRI, FIFRA).
- This effort could include a telephone campaign with two thrusts:
  - for non-respondents to the prior survey, to determine the proper person to receive, and
  - for surveys returned due to insufficient address, to determine also the proper full mailing address.
- And it might be legally required that companies respond to a final survey or to the next seminar announcement.#

All targeted outreach will nevertheless be confounded in part by the constant turnover in the industry -- opening and closing plants, buyups and buyouts, etc.

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* For example: "Your reporting under SNUR indicates that you are a consumer of one of the chemicals on Schedule 2, and therefore ..."

See "Survey of U.S. companies...," Appendix D, "Suggested legislative effort to facilitate a comprehensive listing of companies."

4.2.3 Issues for Implementation Regulations

The U.S. domestic regulations that will support the CWC Implementing Legislation are of great interest to the chemical and related industries. In the regulations (and supporting documents) on reporting, industry will look for answers to the questions still before the PrepCom (see Section 4.1) as well as specifics on:

- a comprehensive strategy for disseminating reporting materials, involving the *Federal Register*, trade associations, and direct mailings,
- the comment period for the regulations,
- the domestic timelines for reporting,
- availability of software providing an electronic reporting format,
- provision for a non-certified "Nothing to Report" response on the reporting form, to relieve companies of concern about future charges of responsiveness,
- how to handle the Initial Declaration if it must be filed before the end of the full calendar year prior to EIF,
- case studies of reporting on various changes in anticipated activities, such as an upset that puts a facility unexpectedly over a reporting threshold during the year,
- ground rules for determining the primary responsibility for reporting in cases of toll manufacture and other secrecy agreements, leased facilities, joint ventures, facilities in non-States Parties, and exports by freight agents,
- provision of an inquiry hot-line (to cover many of the other types of questions in Section 3 and Appendix B), whose answers are legally binding (or explicitly not legally binding) on the National Authority and whose mail turnaround time is short,
- case studies of the possible application of the penalties,
- the bounds of information release by the National Authority for law enforcement,
- how to make claims for special CBI handling within the OPCW, as well as the complete PrepCom document on CBI,
- reporting materials that 1) explicitly state the domestic protection for all submitted data and 2) state that the CBI claim on the forms pertains only to greater than the normal OPCW protections, which should also be explained (i.e., how the automatic "RPH" system will be applied to some data on forms with a CBI claim),

- an explicit, but minimum necessary, record keeping requirement, including necessary and/or advisable record keeping if declarations are not required,
- coordination with existing export controls on chemicals,
- a mechanism to excuse reporting on discrete organic chemicals, after an initial declaration, if nothing changes on the form,
- advice on estimating the contribution of certain streams, such as waste streams and vents or R&D work, to aggregate and range declarations, including suggestions for bases of such estimates, and
- additional guidance on
  - -- public relations during inspections
  - -- handling samples on- and off-site
  - -- advice to customers on possible reporting requirements.

In the subsequent regulations on inspections, in addition to the applicable features expected in the earlier regulations, industry will be looking for:

- guidance for negotiation of a facility agreement,
- detail on the role(s) of the National Authority escort and other government advisors,
- the company's rights with respect to prior vetting of individual inspectors, negotiation of the inspection plan, control of access, and review of the inspectors' reports, and
- a determination of how the challenge inspection regime affects government-owned, contractor-operated facilities.

APPENDIX A

DETAILS ON OUTREACH AND SEMINAR CONDUCT

A.1 SEMINAR SITE SELECTION

Prior to the first series of briefings in 1993, the project team identified five specific regional seminar sites -- Washington DC, New York City area, Houston, Los Angeles and Chicago. For the second series in 1994, that group was adjusted, retaining only Chicago, but changing to Baltimore, Boston, New Orleans, and Las Vegas for a variety of specific reasons, and adding Atlanta as a sixth site. The criteria for the sites in both cases included:

- access to air transportation,
- centrally located to the plants in the region, and
- consideration for attracting the small producers, processors, consumers, and distributors which are a central goal of this project.

For this third series, the earlier groups of sites were again adjusted for the following reasons:

- Two sites in the first group -- Washington, Houston -- were returned to for regional variety, but Atlanta was retained due to lack of a convenient alternative (the Houston seminar also immediately followed a one-day seminar produced by DOC's Bureau of Export Administration, with the hope of capturing some of that audience; and the Houston site was situated on the beltway rather than downtown);
- Newark replaced Boston, returning to the northern New Jersey area represented by New Brunswick in the first group but at a site maximizing accessibility to the airport (it also immediately followed an export control seminar);
- Detroit replaced Chicago, for regional variety and because of the difficulty of scheduling Chicago sites within reasonable access to the airport without very long advance notice; and
- Oakland replaced Las Vegas (and earlier Los Angeles) for regional variety and in a later-abandoned attempt to co-schedule an export control seminar.

The selection was done with the benefit of close consultation with the ACDA COTR and was ultimately approved by ACDA and the Department of Commerce (DOC).

A.2 PUBLICITY

EAI prepared an announcement of the planned regional seminars for publications and, following ACDA approval, mailed the announcement to selected individual companies and key trade associations. The basic announcement is shown in Figure A-1. The mailing to industry was sent to 1000 companies as explained in Section 2.2. The letter to industry

was accompanied by a letter signed by Donald Mahley, Deputy Assistant Director Multilateral Affairs Bureau, ACDA, shown in Figure A-2.

The announcement was designed to catch the interest of the target audience, to contain adequate detail to make the point of the importance of the issue and the seminars and, yet, to be simple enough to retain readers' attention. Announcements were distributed with emphasis on the timing of the announcement versus the scheduled date of the seminar. Adequate time was necessary for EAI's subsequent planning and for the potential attendees to respond.

The seminars were also announced in the DOC publication *The BXA Insider*, in the January 1995 issue (see Figure A-3). Subsequently, the Newark and Houston seminars were advertised in individual BXA mailings for their seminars on the prior days in each case.

Associations were again requested to publicize the seminars and their importance to association members, as a service to their members (see sample written request in Figure A-4).

Two announcement publications were pursued. First, an announcement was prepared for the *Commerce Business Daily* and appeared in the issue of February 15, 1994. This publication reaches all companies doing work with the U.S. Government. A *Federal Register* announcement was prepared by EAI, approved, and published by ACDA on February 28, 1994. Many companies read the *Federal Register*, as it is the source of announcements and final decisions on all regulatory actions by the U.S. Government. Copies of the announcements are shown in Figures A-5 and A-6.

A.3 CONDUCT OF REGIONAL SEMINARS

The initial activity in this part of the project was the planning of the seminar at each site. Upon approval of the regional seminar sites by the ACDA COTR, EAI began the detailed planning. The first task was to locate several potential meeting locations for each seminar. The criteria for initial selection of alternative sites were:

- capability to accommodate the anticipated target industry attendance,
- availability of lodging either at the site or in the immediate vicinity to accommodate attendees,
- easy access to a major airport,
- reasonable rates for both lodging and the conference facility, and
- a facility capable of supporting the conference with logistics (setup of conference facility, adequate tables and chairs in the desired row arrangement, coffee and lunch catering services, screen, sound system, etc.)

The application of these criteria to each regional site varied somewhat based on the estimates of attendees derived from the experience of the previous two series of

IT'S TIME TO PREPARE FOR THE CHEMICAL WEAPONS CONVENTION

IS YOUR COMPANY READY??

WHO IS AFFECTED

The Chemical Weapons Convention (CWC) will directly affect many hundreds of private sector chemical manufacturers and users. By late 1995, the CWC will require affected companies to:

Submit reports on production, processing, international trading and consumption of many organic chemicals;

Report plant information and anticipated production plans; and

Host on-site inspections by international verification teams.

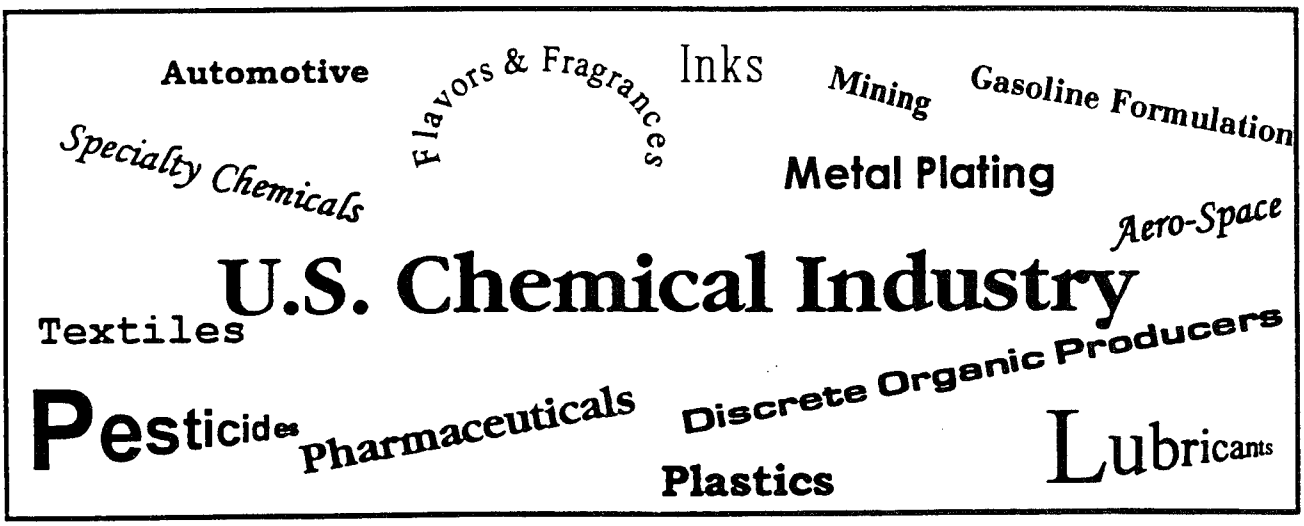
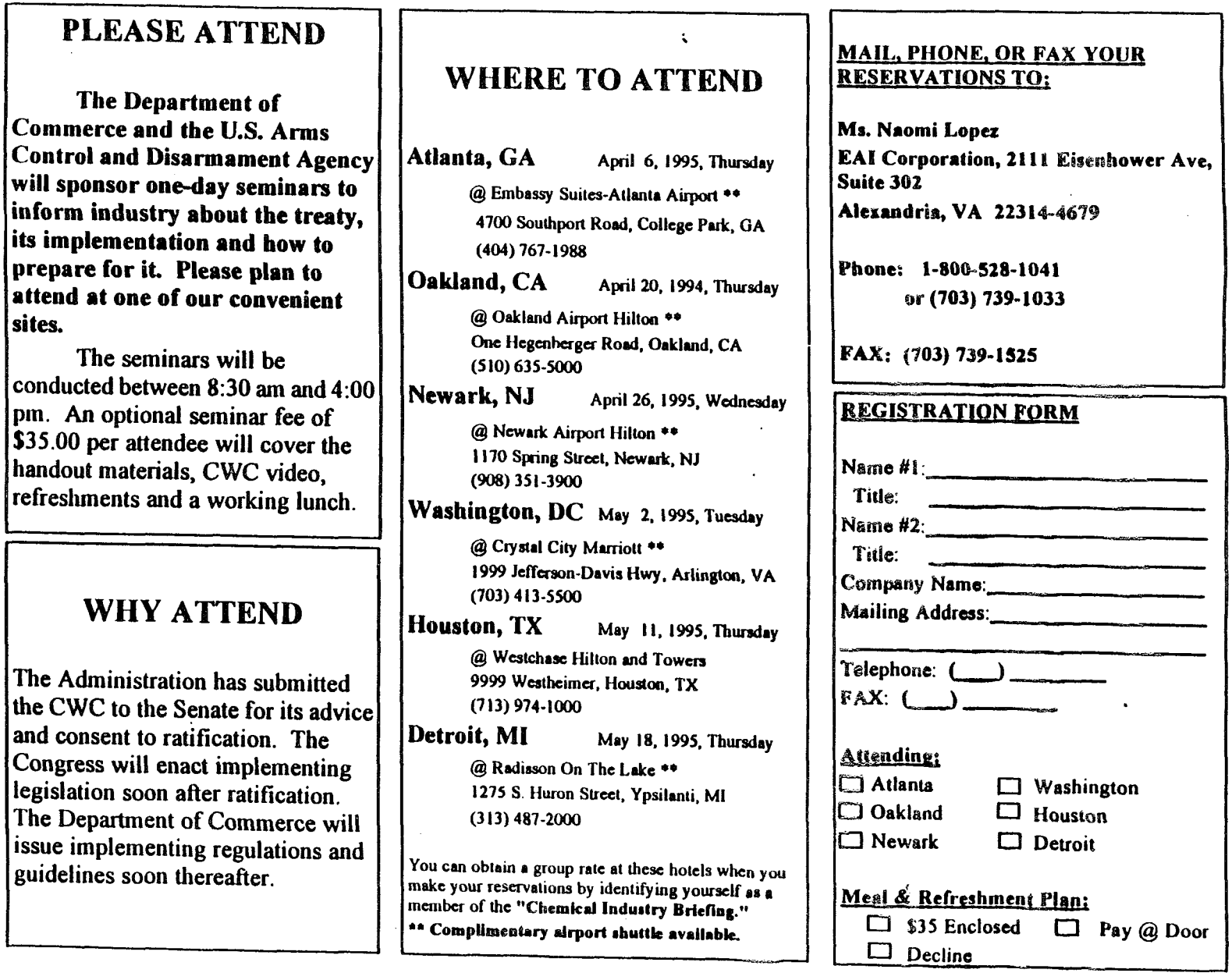


Figure A-1. Seminar Announcement



PLEASE ATTEND

The Department of Commerce and the U.S. Arms Control and Disarmament Agency will sponsor one-day seminars to inform industry about the treaty, its implementation and how to prepare for it. Please plan to attend at one of our convenient sites.

The seminars will be conducted between 8:30 am and 4:00 pm. An optional seminar fee of $35.00 per attendee will cover the handout materials, CWC video, refreshments and a working lunch.

WHY ATTEND

The Administration has submitted the CWC to the Senate for its advice and consent to ratification. The Congress will enact implementing legislation soon after ratification. The Department of Commerce will issue implementing regulations and guidelines soon thereafter.

WHERE TO ATTEND

Atlanta, GA April 6, 1995, Thursday
@ Embassy Suites-Atlanta Airport **
4700 Southport Road, College Park, GA
(404) 767-1988

Oakland, CA April 20, 1994, Thursday
@ Oakland Airport Hilton **
One Hegenberger Road, Oakland, CA
(510) 635-5000

Newark, NJ April 26, 1995, Wednesday
@ Newark Airport Hilton **
1170 Spring Street, Newark, NJ
(908) 351-3900

Washington, DC May 2, 1995, Tuesday
@ Crystal City Marriott **
1999 Jefferson-Davis Hwy, Arlington, VA
(703) 413-5500

Houston, TX May 11, 1995, Thursday
@ Westchase Hilton and Towers
9999 Westheimer, Houston, TX
(713) 974-1000

Detroit, MI May 18, 1995, Thursday
@ Radisson On The Lake **
1275 S. Huron Street, Ypsilanti, MI
(313) 487-2000

You can obtain a group rate at these hotels when you make your reservations by identifying yourself as a member of the "**Chemical Industry Briefing.**"
** **Complimentary airport shuttle available.**

MAIL, PHONE, OR FAX YOUR RESERVATIONS TO:

Ms. Naomi Lopez
EAI Corporation, 2111 Eisenhower Ave, Suite 302
Alexandria, VA 22314-4679

Phone: 1-800-528-1041
or (703) 739-1033

FAX: (703) 739-1525

REGISTRATION FORM

Name #1: _____
Title: _____
Name #2: _____
Title: _____
Company Name: _____
Mailing Address: _____
_____
Telephone: (___) _____
FAX: (___) _____

Attending:
☐ Atlanta ☐ Washington
☐ Oakland ☐ Houston
☐ Newark ☐ Detroit

Meal & Refreshment Plan:
☐ $35 Enclosed ☐ Pay @ Door
☐ Decline

AC93MC1002

Figure A-1. Seminar Announcement (continued)

AC93MC1002

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

Washington, D.C. 20451

January 13, 1995

Dear Sir or Madam:

On January 13, 1993, the Chemical Weapons Convention (CWC) was opened for signature in Paris and thus far has been signed by 159 nations, including the United States. The CWC has been sent to the U.S. Senate for its advice and consent to ratification. This Convention is an historic agreement, which, when in force, will effectively ban the development, production, possession and use of these horrific weapons. Of most immediate significance to your company, however, is the Convention's requirements for monitoring the production of chemicals having the potential for use in the manufacture of chemical weapons. If your company is a producer, processor, or consumer of one or more of the CWC-relevant chemicals you may have upcoming reporting requirements under the terms of the CWC.

The U.S. Arms Control and Disarmament Agency (ACDA) is offering one-day seminars during April and May to familiarize industry with the requirements of the CWC. The seminars will be jointly conducted by ACDA, the U.S. Department of Commerce, and a supporting contractor, EAI Corporation. Those attending will receive the latest information on the CWC's provisions, rights and responsibilities of industry under the Convention, draft implementing legislation and the implementation schedule. Those attending also will have an opportunity to comment and ask questions on all aspects of CWC implementation. The enclosed announcement includes specific information on seminar dates, locations and registration. In addition, you may call (800) 528-1041, toll-free, for further information and assistance.

Figure A-2. Letter from ACDA Deputy Director Mahley to Industry

American industry plays a significant role in preventing the transfer of materials for foreign chemical weapons production purposes. In fact, the U.S. chemical industry helped in the shaping of those provisions of the CWC which are relevant to the manufacturing sector. Nonetheless, the Convention requires that civilian chemical manufacturing and processing facilities in this country, as in all other countries becoming Parties to this agreement, be subject to data reporting and on-site inspections. These verification activities are intended to help assure international compliance with the Convention.

Your participation in these seminars will help the United States develop reasonable and effective means of implementing the CWC and will facilitate your company's compliance with its requirements. We look forward to your attendance.

Sincerely,

Donald A. Mahley
Deputy Assistant Director
Multilateral Affairs Bureau

Enclosure:
Seminar Announcement and Registration Form

Figure A-2. Letter from ACDA Deputy Director Mahley to Industry (continued)

AC93MC1002

Informational Seminars

Is Your Company Ready to Comply with the Chemical Weapons Convention?

Are you or your company in the aerospace, plastics, metal plating, textile, pharmaceutical or mining business? If so, you, along with many other industries that use certain chemicals, will be affected by the Chemical Weapons Convention (CWC). When it takes affect, the CWC will require certain companies to:

- submit reports on production, processing, international trading and consumption of many organic chemicals;
- report plant information and anticipated production plans; and
- host on-site inspections by international verification teams.

The Clinton Administration has submitted the CWC to the Senate for its advice and consent to ratification. The Congress will also consider implementing legislation. The Department of Commerce will issue regulations and guidelines after the law and takes effect.

The Department of Commerce and the U.S. Arms Control and Disarmament Agency will sponsor one-day informational seminars to inform industry about the treaty, its implementation and how to prepare for it.

The seminars will be conducted between 8:30 am and 3:45 pm. An optional seminar fee of $35 per attendee will cover the handout materials, an informational CWC video, refreshments, and a working lunch.

Please plan to attend one of the informative seminars on the following dates:

Atlanta, Georgia	***Oakland, California***
Thursday, April 6, 1995 Embassy Suites-Atlanta Airport (404) 767-1988	Thursday, April 20, 1995 Oakland Airport Hilton (510) 635-5000
Newark, New Jersey	***Washington, D.C.***
Wednesday, April 26, 1995 Newark Airport Hilton (908) 351-3900	Tuesday, May 2, 1995 Crystal City Marriott Arlington, Virginia (703) 413-5500
Houston, Texas	***Detroit, Michigan***
Thursday, May 11, *1995* Westchase Hilton and Towers (713) 974-1000	Thursday, May 18, 1995 Radisson On The Lake Ypsilanti, Michigan (313) 487-2000

Please Note: Group rates are available at these hotels if you identify yourself as a member of the "Chemical Industry Seminar" when making your reservations. ☐

Registration Form

Chemical Weapons Convention Seminar

Name #1: _____
Title: _____
Name #2: _____
Title: _____
Company Name: _____
Address: _____
_____
Telephone #: _____
Fax #: _____
Corporate HQ Mailing Address:
_____
_____

Session Attending:

☐ Atlanta, Georgia
☐ Oakland, California
☐ Newark, New Jersey
☐ Washington, D.C.
☐ Houston, Texas
☐ Detroit, Michigan

☐ $35 enclosed (includes handouts, CWC video, & lunch).
☐ Will pay at the door.
☐ Decline optional fee.

Please mail this form to:
Ms. Naomi Lopez
EAI Corporation
2111 Eisenhower Avenue
Suite 302
Alexandria, VA 22314-4679

..or call 800-528-1041 or 703-739-1033 or

fax it to: (703) 739-1525

Figure A-3. Announcement in *The BXA Insider*

AC93MC1002

ASSISTANT DIRECTOR

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

January 13, 1995

Dear (insert name):

I am writing to solicit your association's assistance in providing important regulatory information to your members that may have a direct affect upon them.

On January 13, 1993, the Chemical Weapons Convention (CWC) was opened for signature in Paris and thus far has been signed by 159 nations, including the United States. The CWC has been sent to the U.S. Senate for its advice and consent to ratification. This Convention is an historic agreement, which, when in force, will effectively ban the development, production, possession and use of these horrific weapons. Of most immediate significance to your membership, however, is the Convention's requirements for monitoring the production of chemicals having the potential for use in the manufacture of chemical weapons. If your member companies produce, process, or consume one or more of the CWC-relevant chemicals, they may have upcoming reporting requirements under the terms of the CWC.

The U.S. Arms Control and Disarmament Agency (ACDA) is offering one-day seminars during April and May to familiarize industry with the requirements of the CWC. The seminars will be jointly conducted by ACDA, the U.S. Department of Commerce and a supporting contractor, EAI Corporation. Those attending will receive the latest information on the CWC's provisions, rights and responsibilities of industry under the Convention, draft implementing legislation and the implementation schedule. Those attending also will have an opportunity to comment and ask questions on all aspects of CWC implementation. The enclosed announcement includes specific information on seminar dates, locations and registration. In addition, you may call (800) 528-1041, toll-free, for further information and assistance.

Figure A-4. Sample Letter Sent to Trade Associations

American industry plays a significant role in preventing the transfer of materials for foreign chemical weapons production purposes. In fact, the U.S. chemical industry helped in the shaping of those provisions of the CWC which are relevant to the manufacturing sector. Nonetheless, the Convention requires that civilian chemical manufacturing and processing facilities in this country, as in all other countries becoming Parties to this agreement, be subject to data reporting and on-site inspections. These verification activities are intended to help assure international compliance with the Convention.

Your support in alerting your membership about these seminars will help the United States develop reasonable and effective means of implementing the CWC and will facilitate your member companies' compliance with its requirements. Thank you in advance for your assistance.

Sincerely,

Lori Esposito Murray

Enclosure:
Seminar Announcement and Registration Form

Figure A-4. Sample Letter Sent to Trade Associations (continued)

AC93MC1002

WEDNESDAY
February 15, 1995

COMMERCE

Issue No. PSA-1284

A daily list of U.S. Government procurement invitations, contract awards, subcontracting leads, sales of surplus property and foreign business opportunities

BUSINESS DAILY

ATTENTION: U.S. CHEMICAL AND RELATED INDUSTRY. GOVERNMENT-SPONSORED CHEMICAL WEAPONS CONVENTION (CWC) SEMINARS FOR INDUSTRY The U.S. Arms Control and Disarmament Agency (ACDA) and the U.S. Department of Commerce (DOC) are sponsoring regional one-day seminars to explain the Chemical Weapons Convention, the draft U.S. legislation currently being reviewed by Congress that will implement the CWC within the U.S., and significance of the CWC and the legislation to U.S. industry. The CWC will directly affect a significant number of private sector chemical producers, consumers and processors. Depending on the specific chemical, the CWC requires: detailed reports of the quantities produced, processed, or consumed in your facilities; detailed production plans and site (plant) information; and short-notice on-site inspections of industry facilities and records by international inspection teams. The key issues for U.S. chemical and related industry managers are: compliance with CWC requirements; protection of confidential/proprietary business information; prevention of adverse publicity/controversy; prevention of unnecessary costs/production disruptions; inspection readiness; and schedule for implementation. Seminars will be held at the following locations: Atlanta, GA on April 6, 19959 boakland, CA on April 20, 1995; Newark, NJ on April 26, 1995; Washington, D.C. on May 2, 1995; Houston, TX on May 11, 1995; and Detroit, MI on May 18, 1995. For registration materials and more information on how the CWC affects your company, contact Naomi Lopez, 2111 Eisenhower Avenue, Suite 302, Alexandria, VA 22314-4679. Telephone (800)528-1041 or (703) 739-1033, Fax: (703) 739-1525.

Figure A-5. Commerce Business Daily Notice

AC93MC1002

Federal Register
February 28, 1995

ARMS CONTROL AND DISARMAMENT AGENCY

U.S. Government Sponsored Chemical Weapons Convention (CWC); Seminars for the Chemical and Related Industry

Agencies: Arms Control and Disarmament Agency (ACDA) and the Department of Commerce (DOC).

Action: ACDA and DOC will sponsor regional one-day seminars to explain the CWC and its significance for U.S. industry.

Summary: The Chemical Weapons Convention (CWC) will directly affect a significant number of private sector chemical producers, consumers and processors. The CWC imposes requirements on certain industrial facilities. Depending on the specific chemical, the CWC requires:

- Detailed reports of the quantities produced, processed, or consumed in your facilities;
- Detailed production plans and site (plant) information;
- Short-notice on-site inspections of industry facilities and records by international inspection teams.

The key issues for U.S. chemical and related industry managers:

- Compliance with CWC requirements;
- Protection of confidential/proprietary business information;
- Prevention of adverse publicity/controversy;
- Prevention of unnecessary costs/production disruptions;
- Inspection readiness;
- Schedule for implementation.

The U.S. Arms Control and Disarmament Agency (ACDA) and the Department of Commerce (DOC) are sponsoring regional one-day seminars to explain the CWC, the domestic draft implementation legislation that is currently being reviewed by the Senate, and their significance to U.S. industry. You are invited to attend one of the following:

Atlanta, GA.....	April 6, 1995
Oakland, CA.....	April 20, 1995
Newark, NJ.....	April 26, 1995
Washington, DC.....	May 2, 1995
Houston, TX.....	May 11, 1995
Detroit, MI.....	May 18, 1995

For registration materials and more information on how the CWC affects your company, contact Naomi Lopez, EAI Corporation, 2111 Eisenhower Avenue, Suite 302, Alexandria, VA 22314-4679. Telephone (800) 528-1041 or (703) 739-1525.

Figure A-6. Federal Register Announcement

seminars. For example, the west coast region was expected to have substantially fewer potential attendees than the mid-eastern or upper mid-west regions.

Negotiations with the identified potential sites were conducted to establish the best rate for both rooms and the conference facility, along with adequate conference support services. In addition, the selected hotel was asked to set aside a block of 10 rooms for conference attendees for the night prior to the conference.

Upon completion of the evaluation of each site, negotiations for the specific requirements and costs were completed and a contract was signed with each site that specified the services and support to be provided and the cost.

In terms of planning and coordination with attendees the following steps were be taken:

- Response to the various announcements was taken via the toll-free telephone number, by telephone facsimile, or by mail at EAI Corporation.
- Registration forms were sent to prospective attendees that requested them (the general mailing included that form).
- Along with the registration form, information on the hotel and related conference logistics was provided.
- Registrations were processed and filed for tracking.
- Each registrant received confirmation by telephone facsimile.

At each seminar, EAI had two individuals involved in the registration of attendees (as well as final logistical details). Registration consisted of the acknowledgment of the presence of the individual and confirmation of information (spelling of name, company, other company related information), the issuance of a pre-prepared name tag, collection of the meal plan fee from those who had not previously paid, provision of receipts for meal plans, and distribution of the supplemental material that had been developed for the seminar (see Volume 2, Annex III) and a copy of the Chemical Weapons Convention.

An illustrative agenda of the seminar is shown in Figure A-7. The timing, however, was flexible to allow adequate time for questions and answers from the attendees, whose interests were expected to be distributed somewhat differently from region to region. The buffet-style working lunch allowed participants to mix and informally discuss concerns. EAI's staff made themselves available to respond to questions, discuss concerns and otherwise generate informal feedback. As in other situations, this technique proved extremely useful for identifying issues and concerns that might not surface otherwise.

SEMINAR AGENDA

8:00 - 8:30	Registration	EAI
8:30 - 8:35	Welcome	ACDA
8:35 - 9:20	CWC Overview	ACDA
9:20 - 9:30	Role of BXA in Implementation	DOC
9:30 - 10:15	Policies for Declarations	DOC
10:15 - 10:30	Break	
10:30 - 11:30	Examples of Declarations	EAI
11:30 - 12:30	Lunch	
12:30 - 1:15	CWC Inspections	EAI
1:15 - 1:45	Implementing Legislation	ACDA/GC
1:45 - 2:15	Industry Perspective	CMA
2:15 - 2:30	Break	
2:30 - 4:00	Panel Discussion: Issues & Questions	ACDA, DOC, CMA, EAI

Figure A-7. Seminar Agenda

AC93MC1002

APPENDIX B

COMPILATION OF INDUSTRY CONCERNS AND COMMENTS

The paragraphs in this compilation are the most substantive comments and questions made by the attendees at the six regional seminars. The questions, concerns and other input from the attendees during the formal sessions and the panel discussion were published in the six Interim Reports. Many other questions were for information that was provided within the seminars, or will be clear when final reporting forms and instructions are available (e.g., which activities are reported for which schedules).

The selected comments have been edited for conciseness and clarity, and have been arranged so that similar topics are treated together. Paragraphs without a separating line are on closely associated topics. The material has been divided according to broad categories of industry concerns (corresponding to those listed in Section 3 of the main text):

Several levels of further subdivisions were added as major subthemes became evident. Although most comments fall fairly clearly in one or another of the major categories, many of them additionally bear on two of the categories in particular -- suggestions for policymakers and appeals to minimize the burden on industry through the implementation legislation.

B.1 PROCEDURES FOR REPORTING

See also B.3.2.1-.4.

B.1.1 Initial Declaration

Does "start preparing now" mean start using the draft forms in here as a means of generating data? You're not suggesting starting to fill out information in draft form at this point? Just determine whether or not you're caught, so to speak?

Could you elaborate on what conditions might result in a plant being designated as a CWPF and the possible consequences? Is there a chance of that designation for a plant having a large amount of Schedule 1 Chemicals, although it has never had anything to do with chemical weapons?

B.1.2 Historical Data

My company has gone through several iterations. Am I responsible for what was the much larger company in 1942? I've worked at quite a few other bigger companies that had a facility that is now closed. And now the bigger company no longer exists.

I work for Uniroyal Chemical Company; it used to be part of Uniroyal, Inc., a big company, right. Now, I don't know if we did or did not make Schedule 3s that went into chemical weapons production. I don't know if we have any records, but we've got people around that have been here that long and I could conceivably get anecdotal data from somebody that says we did that. Now what?

B.1.3 Responsibility for Reporting

When you use various materials from suppliers and they aren't required to list on Material Safety Data Sheets the chemicals that are in there, are we required to write to all these suppliers and ask them if they have any of these scheduled chemicals, Schedule 3 chemicals essentially, in these supplies? Do you recommend that as a purchaser of materials we should ask them, if you don't receive any information from your suppliers voluntarily? (In the case where they escaped the investigation requiring MSDS requirements.)

Somebody brought up R&D labs or something like that -- I don't know whether somebody might have at some point acquired a scheduled chemical. Do we have to check exhaustively on whether somebody imported something? Are you required to go through all your lab notebooks and your labs and count your R&D production and use that as part of your aggregate? I mean, your production you can find it, because there are records, there's production documents, but your R&D is done in 16 laboratories and it's documented in 150 lab notebooks. I was just worried about documentation, record-keeping to show that we actually did something.

Under the CMA Product Stewardship program, if you're the manufacturer of a Schedule 2 chemical, it might be wise to warn your customers who would be processors that they could be subject to this, because that's one of the covered operations.

Who is supposed to prepare declarations for GOCO facilities?

Regarding designation of owner and operator in complicated cases: Say you participate in a plant condo, where you own a plant and its equipment, but it is operated for you by another company, then who reports? If you have two or more tenants on an industrial site, but you have one waste water treatment facility, can you require those other tenants to make their own declarations, or do you really have to look at it as a total?

How is the convention going to treat tolling arrangements? Where a company is tolling for you, but you don't own that company, but they are making a product for you at your direction and using your technology, who reports (it's records in different places, each company keeps its own records). For toll manufacturing, where you pay a manufacturer to make products for you, who has to report -- you or the owner/operator of the manufacturing plant? What happens if a toll producer does the chemical reaction making a chemical for us; what if that company only does processing of the chemical? What's the difference between the producer and the toller, in terms of reportability? Who is

responsible for reporting -- the producer or a toller. A lot of times we hire somebody to make chemicals for us and they are called a tolling [?], but the company that hires them actually controls their operation, so wouldn't we report? Even though they don't have any ties to the chemical work whatsoever, and they don't put it into commerce? In the same context, if tollers have to produce or process, and a lot of times they cannot extrapolate because something that happens on very short notice that they don't know in advance. So, what's the toller's dilemma? In situations where they cannot expect exceptions, because you're talking about 60-day or 120 -day deadlines and the total may or may not be known until one week before the end of the year that they produce it.

If we use a Schedule 2 chemical, and the excess in a waste stream is sent off-site for incineration, will the waste facility have to report or the facility that shipped it? What, if any, are the reporting obligations for a facility which takes production waste streams from a variety of producers and uses these as a fuel source for non-schedule and non-discrete organic chemical streams are extremely complex and vary from batch to batch. Is it possible that there may be scheduled chemicals in the waste stream?

How can I certify that nobody anywhere in the rest of the company is not doing something declarable? Referring to the certification statement -- some sites will be unable to certify for all subsidiary or entire corporate structure; need more flexible language here. [The forms will be sent to POCs who will presumably manage the overall responsibility; this is the same as TRI does it!] The certification requirement in Block 6 may be spelled out better in the instructions that aren't here, rather than just looking at it and trying to figure it out. [This followed a very confused conversation; the instructions on the Commerce forms are quite clear.]

Do corporations that receive the declaration packages and determine that they do not have to report still have to make a non-use declaration? If so, does Question C.9 require certification?

It's not clear to me how the reporting requirements apply to international locations. For corporations with both U.S. domestic and international manufacturing facilities, do the reporting requirements for a U.S.-based entity apply to their facilities worldwide? What about joint ventures? What about minority interest in organizations and/or facilities?

Since there are no related technology controls, a subsidiary making Schedule 3 chemicals in Taiwan can continue to do so? What about technology transfer of a process rather than actual bulk chemicals? For those of us who may have off-shore responsibilities for subsidiaries, is there going to be a list of other national authorities? If you have off-shore facilities, is there going to be a list of national authorities. My off-shore facilities are going to come back to me and say "who do I send the forms to?" So, I can use such a list.

In reference to the reportable activities for production of discrete organic chemicals at overseas plant sites, what happens if that government is not a party to the Chemical Weapons Convention? Doesn't the answer depend on where the full disclosure comes in -- we have a reporting requirement as the headquarters organization controlling certain foreign subsidiaries in countries, for instance like Angola or Kazakhstan, or you've a reporting requirement that's only in that country itself.

What happens with some companies whose production fluctuates and causes them to go on and off the list of companies needing to make declarations?

What happens if you, the government, do not meet your obligation to report timely to the OPCW? There are ramifications [for companies whose declarations are not submitted]?

B.2 PROCEDURES FOR INSPECTIONS

See also B.3.2.5.

B.2.1 Facility Agreements

When will we receive guidance on preparing site facility agreements? I'm still confused on facility agreements at this the juncture; that is, what kind of guidance will we get? When should this facility agreement be developed? Should this be done by the time of the declaration? Will facility agreements cover the inspections of undeclared sites, too, or just the declared sites? So they would just inspect at random?

You talked a lot about managed access measures. Do you need to define those upfront in the facility agreement or can you do that later, if you forget things in the agreement?

B.2.2 Public Relations

You may not know this, but during the inspection would it be a public event? In other words, would the press know that the site is being inspected?

B.3 SUGGESTIONS FOR U.S. PREPCOM NEGOTIATORS AND POLICYMAKERS

The following comments are in addition to matters implied in other subsections (B.1, B.2. B.4.3).

B.3.1 Procedural Suggestions for U.S. Policymakers

B.3.1.1 Implementation Schedule -- Information Needed ASAP

What do you see as the time frame for a Senate vote and the President to sign the legislation? Do you see the Senate advice and consent, and the bill being passed and the President signing it, when? With all the other activities that Congress has on its plate this year, do you realistically expect Congress or the Senate to ratify and then Congress, both houses, to pass implementing legislation this year? What's the outlook for ratification in Congress? We've heard several different opinions on the status of the legislation. Is there a current draft available of the implementing legislation that's being sent to the Hill? Is it worth looking at, at this point, or do you think it's going to be modified?

Could you review again the status of the implementing regulations that have to be issued? Is there going to be a draft review period? Any comments and things of this sort? How does all of that stand? I know once it's ratified there's again a short period, but what about the legislation?

Is there any timetable for the final implementation of the expert group's recommendations, that you are aware of?

What about the Japanese, the French? Obviously they're looking at it haven't they put together some of the regulations.

What's the due date for when industry is going to have to submit the information to the Department of Commerce, assuming you get the forms in August, if that's when the 65th ratification comes in.

Please review the relationship of EIF in December but reporting already in October 1995.

For the telephone assistance numbers Rick gave us, will that be like calling the IRS? What will be the turnaround time for getting an answer?

B.3.1.2 General Communication to Industry

Would you repeat again how we are going to receive the proper reports? Is there a way for me to determine where the forms for our company will be mailed?

When the implementing regulations come out, what section of the CFR will they be in? How will we hear other than through the Federal Register? Do you know the title and the part under Commerce regulations that will be amended? What is the Title of the Department of Commerce volume?

Is there any consideration being given to a submission of information electronically? For the first time around? Someone made reference to the Internet; could you put more of this stuff online so we could access it that way.

Is there any place we can call up to discuss these individual issues. There are going to be situations that look a little bit like polymers or whatever, and we are going to need some interpretation help on whether these things are reported; there will be a lot of complex situations like that.

The presentation went through the Schedule 2, Schedule 3 type of reporting, and in fact, almost all of it was always on Schedule 2 and 3. Why was Schedule 1 not really talked about? Is that such an obvious thing?

Companies that are multinationals should be aware that there could be interruptions of their normal business between operations in States Parties and non-States Parties. Can you identify the names of those countries of concern that probably won't be signatories [so that trade interruptions can be identified in advance]?

B.3.1.3 Outreach, Including with Small and Peripheral Companies

What happens to those companies that are unaware of the reporting requirements? I feel lucky that I know that you have the seminar. How do you reach those that don't know and then what are the consequences? What kind of outreach efforts are underway to inform companies that are not here and that don't know?

How does DOC know whom to get the materials to? I've looked through the treaty and the various schedules. Taking Schedule 3, for example, I find it remarkable you say only 70 chemical companies are affected by Schedule 3; is it the threshold?

B.3.1.4 Other Suggestions

Could you give us just one opinion of whether this declaration will be voluntary or mandatory?

Are there any security guidelines for manufacturers to adopt to secure the industry control of inventories to control proliferation?

Please provide step-by-step suggestions on how a non-chemist can begin collecting information on whether a company has a duty to report. I am the export control manager. My company is highly decentralized. I am new to the company, not a chemist, and need guidance on how to start gathering information to get the answers. Who from my company should attend these conferences? A chemist? How do I communicate within my company the importance of this treaty and how do I get them to comply with it?

B.3.2 Suggestions for Regulatory or PrepCom Clarifications

B.3.2.1 Activity and Accounting Definitions

a. Import, Export, Low Concentrations

Is there no threshold for reporting on imports and exports? Somebody brought up R&D labs or something like that -- I don't know whether somebody might have at some point acquired a scheduled chemical. Do I have to check on whether somebody imported something? Can we import scheduled chemicals from non-States Parties?

b. Factors in Accounting

The other thing that will happen in reality and will help people who are not clear on this, in nearly every case I have looked at, if you are producing these chemicals you are way above these thresholds. But when are they going to set those thresholds?

How does the treaty handle intermediates? Particularly in organic synthesis you typically have a number of steps with unisolated intermediates along the way, and of course these intermediates keep building up and up; for discrete organic chemicals, do you have to keep adding up these intermediates along the process to get your total or is it just the final? EPA has their problems in addressing this.

If you have a Schedule 2 chemical that is further processed into a non-Schedule 2 chemical, is this disposition reported, other than the fact that it is converted into another chemical? What about production of a Schedule 3 chemical that is then consumed without ever being isolated?

If the substance is generated in a vessel and consumed in the next step of the reaction without isolating it, is that declared? On the same issue, we have unit A producing an intermediate; then it goes to a [?] in unit B. Is that [?] system considered production or accumulated at the end? Would the intermediate rules apply to Schedule 2 processing and consumption as well?

We have a facility that produces ethylene, which goes to make ethylene oxide, which goes to make mono and diethanolamines, and so forth. Do you have to report the ethylene? To my understanding, you don't report the ethylene oxide, you do obviously report the ethanolamines if you make enough. Ethylene oxide, I thought, was excluded because it's an oxide?

What about intermediates being produced? We produce vast quantities of HCN, which are not isolated. It is converted into the finished product.

We have a unit that produces a PSF intermediate that's used to produce a final product. Do we report the total of both or the final product? I have a process that generates an intermediate that is a PSF, but is not isolated; then it is further reacted to make a PSF product. Do we declare the intermediate and the final product? What about production of an unwanted Schedule 2 Chemical that is then incinerated?

Say you're mixing chemicals in a batch and you get a reaction going, and you produce, let's say, ethanol -- a certain percentage of that may go up the stack, either through some pollution control equipment or just sent up into the atmosphere, then you have a certain portion that's actually remaining in the product. Now the stuff that escapes to the atmosphere, do you have to estimate that for considering the threshold, so you have to put that in your calculations? How do you deal with that?

Please clarify calculation of reportable amount if the material on hand is a salt of a scheduled chemical. Do we calculate the contained weight of the reported chemical? Note this does not refer to mixtures. So therefore, a producer is likely to have the reportable chemical, but it's sold as the salt, therefore, the customer who buys it as a salt would not be a reportable site because they don't have it as the free amount?

Would it be better to err on the side of being conservative, in filling out a declaration? If there is a question you have about a chemical, whether it should be reported or not, would it better to report as if that chemical were, say, considered as on the list?

Production: is that production for sale, or if you manufacturer it for R&D purposes.

Reportable chemicals under Schedule 3 -- are limited to just the chemicals named and not to mixtures that contain those chemicals, is that correct? Does the continued PrepCom discussion suggest that they may do something along the lines of what they currently do for mixtures, with a threshold for a technical class where you may not need a validated license?

Regarding a mixture of chemicals: does it also apply to the discrete organic chemicals in mixtures?

"Plant" is used very loosely in industry.

Do you add up activities; e.g., if you produce 15 tonnes of triethanolamine and you imported 16 so you exceeded 30, do you report? For a Schedule 3 chemical, production, importation and exportation are reportable activities; would they be cumulative for reporting purposes?

Are all these matters still topics of negotiation or is that something that a locality or a state will determine?

B.3.2.2 Coverage of "Other" Chemicals

a. Definition and Exclusions

You said that the definition of discrete organic chemicals would be narrowed. It's still being negotiated? Are all the [exclusions] you just mentioned required to be considered by The Hague or can they not be totally exempt? Hydrocarbon and polymer -- exclusions I think I'm hearing that proposals are before the PrepCom but it is not clear if they will be acceptable. Please comment specifically on the current status of polymers, PSF polymers, refineries, exploration and production activities where physical separations occur like removing sulfur, and hydrocarbon monomers.

Under the discussion on discrete organic chemicals, is the threshold at a plant site for individual discrete organic chemicals or all discrete organic chemicals at that plant site? The aggregate of a specific chemical or of all discrete organic chemicals? Do PSFs count in the total discrete organic chemicals aggregate?

At the last conference like this I went to they talked about the possible exemptions for petrochemicals, and my concern is polymers. Is there any thought about exempting polymers? The polymerization exclusion has been proposed for over a year; when will U.S. industry know that polymers are excluded?

The polymer exemption is going to be a bit of a problem. You mentioned dimers, trimers and higher polymers, so prepolymers will not be reported? We ethoxylate an alcohol so it has 2 or 3 ethoxy groups on it; is that a prepolymer or a polymer? If an alcohol precursor was produced in over 200 tonnes, then that would cause reporting? I just had another question about polymers -- are there going to be definitions depending on the molecular weight, the reactive functionalities, carbon atoms?

There used to be a definition [of complex materials] involving asterisks on the CAS numbers; not asterisks having to do with the UCVB compounds [in the TSCA Inventory list], rather there were some that have a multiply-asterisked CAS number because the compounds are so complex. I read somewhere a definition that said they were exempt. Will that be used? What is the definition of "complex mixtures" that are proposed as a discrete organic chemicals exclusion? Did you say that there was something in the works as far as surfactants goes? We have a plant that produces sulfonic acid by a reaction of an alcohol with sulfuric acid. Would that be considered a discrete organic chemicals?

Did I understand it correctly that producing a discrete organic chemicals by chemical means may be reportable, but that same discrete organic chemicals produced by fermentation would be exempt?

I produce olefins (ethyl, propyl) and polyolefins; is that reportable? Going back to the polymer exclusion, monomers are not excluded, but would isopropylene be excluded as hydrocarbons? Please review the exclusion for hydrocarbons. There is no clarification for that at this point?

Is the destructive distillation of bituminous coal to produce coke considered a chemical reaction? *If so, is coke then a discrete organic chemicals? Are chemical* products from the distillation of crude coke oven tar, which is a byproduct of the coking process, considered discrete organic chemicals? For example, is creosote [a hydrocarbon with up to 3% tar acids and bases] considered a complex mixture with a unique CAS number?

b. Extent of the Coverage

I don't see "production" on the DOC form.

Why is carbon monoxide excluded; it's a good war gas. It's very toxic and it killed off a lot of people in Germany. Chlorine is also omitted.

We have nothing to do with chemicals weapons and this is the second year I have been to these, and looking at discrete organic chemicals based on the declarations shown today and the information contained in them -- there's no information on estimated production, where you are shipping it, who you are shipping to, etc., so it sounds like it is not very inclusive. So I'm wondering, speaking as a one-person department that is going to have to take on this responsibility, why I have to bother submitting this information when I'm not even reporting which discrete organic chemicals I'm dealing with, I'm just sending in a number. I can understand Schedules 1, 2 and 3, but I don't see the purpose in bothering with discrete organic chemicals.

There's no minimum requirement [on including a particular discrete organic chemicals in an aggregate], it's just any at all?

It's difficult to identify byproduct materials. In identifying discrete organic chemicals, as you point out, if there is a chemical name and the CAS number, it is pretty straightforward, and I think we can deal with it. But if we'd have categories of ill-defined materials, it takes a fairly technical understanding, if you will, of the chemistry involved to know whether you're in or outside of that category. Is there going to be guidance issued on this? The question is about a Schedule 2 chemical that's only theoretically produced, which just says that this reaction product results from this chemistry, and if you've got a CAS number you know what you've got, but otherwise it's something else.

I wonder about some of the non-intentional creations of discrete organic chemicals, for example, waste water treatment. You covered that and then went on with some new words I didn't think I had heard before to talk about chemicals which can be separated from the waste stream. Like if you accidentally, but through a chemical reaction, created a new chemical in your waste water and it comes out like an organic sludge that might contain sulfur, so then wouldn't that be a PSF chemical?

And I just want to cite that we've got a lot of history over the years with the Toxic Substances Control Act and the whole nomenclature aspect associated with it has been probably the biggest problem area that we've had with enforcement. This seems to be going down that same path.

That's actually production you're talking about; not the potential to produce? Is DOC reporting required based on the potential for producing the threshold amount of chemicals? What about sale of facilities domestically or internationally of facilities which could have the potential of producing chemical agents of concern?

B.3.2.3 Will the PrepCom Continue to Change Other Requirements

Are there provisions for adding to or deleting from Schedule 1, 2, 3, etc.? Those of us in the environmental area have watched lists grow, grow, and grow. Would you care to speculate on how many more chemicals will be added to the schedules? Cuomo added a bunch of chemicals to the [New York state right-to-know] list.

The tricothecenes in the yellow rain allegations don't seem to be anywhere in this. What can you say about that?

B.3.2.4 Declarations and Reporting

Aren't the main activities just for the scheduled chemicals that are being declared? Does the treaty really ask what are the main activities? Isn't that beyond the intent of the treaty and just being intrusive? What do you mean by main activity, you mean the business activity of the location? What if you're just manufacturing something? Do you use one or the other or do you have to use both [answers to main activities]? If you use the boxes in the upper part, you don't have to use the boxes in the lower? The five boxes below and the 6 choices above don't jive. This part [main activities] seems to apply to any chemical, not just discrete organic chemicals. If your main activity is production, then we leave off the boxes? The suggestion is that you want a box that says production. I think that should be made clearer for us, because what is implied in these boxes is that it is either any of these 6 or any of these 5, but if you're saying that the lower apply to production whereas the other boxes don't apply to production because it assumed, that needs to be said. For real plant-level filling these out, the suggestion is that it might be better to have a box saying production, and under it the types of production given.

Isn't that [discrete organic chemicals reporting] threshold in the example [#1] a loophole in the treaty? Looking at your overhead where you had the reportable activities and then at the next with reporting thresholds; I want to make sure I understand them. On the reportable activities, for instance under the Schedule 3, processing and consumption are not Xed off, so I'm assuming that on the other page where you have reporting thresholds and you said production, processing and consumption are reported when you were verbally talking about that. So say for Schedule 3 chemicals, the only time you would have to do any reporting is if you would produce the Schedule 3; if you process the Schedule 3 and were underneath that 30 tonnes, you wouldn't have anything to do. Is that correct? So, even if a facility uses more than 30 metric tonnes of the Schedule 3 in the processing activity, it's not covered?

The discrete organic chemicals producers are required to make an annual report. If you are producing the maximum amount, has any thought been given to not requiring an annual report if nothing changes, since I don't see what is gained by a repeated submission that you are above 10,000 tonnes. The NA could know that discrete organic chemicals production is continuing by requiring reporting on an exceptional basis if your production later falls in another category. If your production goes from 10,000 to 20,000 or 25,000, it's the same box, so in an effort to reduce burden on industry, why not make it a one-time-only report, unless there is a change.

Anticipated reporting is an extra burden on everybody; is that part of the convention or is that an interpretation of what we will do?

What's the rationale for the short time frame after ratification for reporting if this has gone on for several years and all of a sudden once it's finalized so many things have been clicked into place and you've got this very narrow window to make a report? Is there a rationale for that or is it just the way it worked out? My concern is, as industry we're going to have some difficulty gearing our operations to comply with this in a very narrow window and to work with some uncertainty. And it would seem as though the process would call for ratifying, then implementing the ratification through some kind of a clarification process and then some reasonable time to implement; and yet it is negotiated for all 27 years or 24 years, and we then pack it all into one month. I guess that is reality; is that negotiable or is that cast in stone?

What guidance documents will be available and when will we see them?

B.3.2.5 Routine Inspections

a. Schedule 1

Can you anticipate that the first sets of inspections will be just at Schedule 1 facilities, and therefore facility agreements would be such that they would only look at things connected with Schedule 1?

b. Reasonableness of the Schedule 2 & 3 Regime

Do you think the legislation requires employees to be trained or made knowledgeable about this thing, about discrete organic chemicals facility inspections. I want to make sure that the facilities get some training, that the manufacturer of discrete organic chemicals does not have a requirement to make the employees of their company knowledgeable about this law.

With the international makeup of inspection teams, is there a potential of language problems? Who's going to be responsible for translation, the inspection team or the inspected site?

To me, if I were inspecting for compliance, and I was told "you can't go here and you can't go here, you can't see this and you can't take samples there," I would be very suspicious. How do you convince them that these places really have nothing to do with CWC and you're not hiding anything? That has nothing to do with CWC?

If a facility is a producer of a Schedule 2 chemical that is used by different companies, will the user companies also be inspected?

c. Refusing Access Selectively to People or Equipment

Could you comment on whether there is any opposition in the Senate, on concerns about inspectors coming from other countries, and such? How would the chemical industry go about, through Department of Commerce, trying to exclude those people from inspections here?

d. Procedural Details

Is there any control or balance in terms of in which country inspections are done?

Is the primary concern during inspections the development of other chemical agents?

Do the managed access procedures apply to non-challenge inspections?

Is there any language on whether photography be allowed during inspections? When people come for inspections are they going to follow the safety rules when they do the inspection? A couple of things that come to mind are, you know, people that come to visit wearing contact lenses and people coming in with beards. There are a lot of companies with specific regulations.

e. Can the Inspected Facility Comment on Reports

In general, when does the facility or plant know if there are problems in the report? How would they be reviewed? What about the chance that there is an anomaly of some sort? What provisions are there for the plant to resolve it?

Is the final report going to go back to the site or to the national authority? Does the final inspection report going to the Inspector General also go to the facility? Can the inspected site request a copy of the final inspection report? Does the facility ever get the final report?

B.4 MATTERS RELATED TO IMPLEMENTING LEGISLATION

B.4.1 Enforcement, Challenge Inspections

B.4.1.1 Domestic Verification, Penalties and Compensation

Are all inspections initiated by this organization that's going to be set up in The Hague or are some of them going to be initiated by the U.S. Government?

What kind of possible enforcement action will there be for noncompliance dealing with chemicals? What about penalties in the draft legislation. Did they mention any amount? What will be the enforcement aggressiveness? Will there be enforcement penalty guidance published after the legislation, like EPA often puts out guidance documents on how they intend to enforce and what their policies would be? What happens to those companies that are unaware of the reporting requirements? What's the penalty if you make errors in filling out a form?

Will there be record-keeping requirements that you have to keep your records, documents, whether or not you were obligated? For a declaration of no reporting obligations, how long do we have to keep records to substantiate that negative evaluation? What data is inspectable and how long do we have to maintain records? Isn't this going to go on forever? In fifteen or twenty years from now, that we have to keep data reported [?]? Somebody is going to have to put it into regulations, the timing. If you want us to keep it at all, it has to be in the regulation. Many companies don't even have a records retention policy; what are they supposed to do? We don't need more regulations, such as on data retention. As far as what somebody mentioned in passing, that it would be very easy to develop internal data controls pertaining to the CWC -- I didn't think it would be that easy. Are there any efforts underway to provide guidelines as to what kind of internal controls would be advisable in terms of record-keeping, in terms of everything we've heard today: preparing for the on-site visits, we've heard about duplicate record-keeping, perhaps things like that.

A philosophical point, is this guidance that we get over the phone legally binding?

Who pays for the cost of these extra samplings? Does the government bear the cost of this?

What would be the responsibilities of a selling company to another country that was allowed and then finding out that country/company reexported to a non-allowed use?

B.4.1.2. Coordination with Existing Legal Requirements

I think it's really important that we focus on limiting what, for example, an EPA inspector or OSIA inspector would or would not be able to do. It would be absolutely overwhelming to have simultaneous eyes looking here and wherever all at the same time. Worse, we're a potential Schedule 1, and in Milwaukee I would have a hard time seeing how we would not also be a media event the same time. So it would be a real service for us. It would be pretty much overwhelming. But all you need is an event going on at the same time there and you might as well sell your stock.

Do the inspectors have the right to take samples off-site? Wouldn't those samples, any samples that go offsite, also be subject to Department of Transportation type regulations, etc.

Regarding the facility agreements we discussed, has there been any consideration given to the extent to which these agreements would require the inspectors to waive potential court liability against the facility? The obvious concern is: we're forced to have an inspector come on to our property, where it may be dangerous, and we don't want him to sue us for exposure. Is that something we should be concerned about?

B.4.2 Handling of Confidential Business Information in Reporting and Inspections

B.4.2.1 CBI Protection in Treaty Context

You mentioned that we should be concerned about the exposure of CBI in pilot plants and research facilities; are they open to inspections?

You mentioned the intent to give a lot of protection to CBI; has there been any consideration to excluding countries that don't generally honor patent or copyright laws?

Will on-site inspection reports be available under FOIA?

On the declaration page, on the very top line, it says "are you claiming this declaration to be confidential business information?" On the strength of that one sentence, I think everyone is going to check that box. It's not like you're claiming CBI on TSCA. We're going to do this as a matter of course, which will put a lot of burden on the National Authority and that's everybody else. Do you have any idea or guess on what philosophy went into putting that box on the declaration? Under TSCA now, a lot of people back off because they don't want to be bothered with answering a lot of questions. That burden doesn't seem to be here and I'm just wondering what's the rationale?

B.4.2.2 Sampling

In what type of situations would they want samples? For instance, we do batch processes and you could have hundreds of them going on in various small amounts. We would also have a problem, of course, with them just taking it in a suitcase off-site because, of course, there are plenty of other hazards associated with many of these chemicals.

B.4.3 Minimize Burden

The following comments are in addition to those directed at the U.S. and PrepCom levels elsewhere.

B.4.3.1 Competitive Advantage

What is the likelihood of any kind of international cooperation from especially third world countries, China for example? And if they don't get that cooperation, what will the OPCW do?

B.4.3.2 Data Release for Law Enforcement

Law enforcement is one of the four exemptions to the disclosure protections. For law enforcement purposes, which laws are involved, would it include the Clean Air Act, Clean Water Act, RCRA?

B.4.3.3 Coordination with Other Domestic Reporting

Do you expect that the export administration regulation that lists countries where you can export precursors under general licenses will ultimately be expanded to include the States Parties? Do you foresee any conflict between the CWC and the Australia Group? Can we expect BXA controls to continue on nations outside of the Australia Group. Will we be allowed to sell these chemicals to countries who have ratified this treaty, but fall outside the Australia Group?

Has an effort been made or is one planned to coordinate the trade requirements on these chemicals with the ECCNs. Is there overlap between these new requirements and the existing ones? Can you explain for us which factors, or what factors, necessitate a separate report for importation and exportation. We were currently reporting that information. For example, on imports, we're completing the form 7501 for U.S. Customs to pay duties, harbor fees, and processing fees and on our exportations we are completing the shipper's export declaration and again we're also reporting on the applications we submit to BXA. We already report everything. Not certain things. We report every importation and every exportation, with the questions on those; it doesn't matter what the chemicals are.